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NAVY SHIPBUILDING PROBLEMS AT GENERAL DYNAMICS

HEARINGS

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE, FINANCE, AND SECURITY ECONOMICS

OF THE

JOINT ECONOMIC COMMITTEE CONGRESS OF THE UNITED STATES

NINETY-EIGHTH CONGRESS

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JULY 25 AND 26, AND OCTOBER 31, 1984

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CONTENTS

WITNESSES AND STATEMENTS

WEDNESDAY, JULY 25, 1984

	Page
Proxmire, Hon. William, vice chairman of the Subcommittee on International Trade, Finance, and Security Economics: Opening statement	1
Kaufman, Richard F., general counsel, Joint Economic Committee	3
Paulisch, Eugene B., Assistant General Counsel, U.S. Department of the Navy, accompanied by Comdr. Daniel Allen, Naval Air Systems Command	37

THURSDAY, JULY 26, 1984

Proxmire, Hon. William, vice chairman of the Subcommittee on International Trade, Finance, and Security Economics: Opening statement	63
Trott, Stephen S., Assistant Attorney General, Criminal Division, U.S. Department of Justice	64

WEDNESDAY, OCTOBER 31, 1984

Proxmire, Hon. William, vice chairman of the Subcommittee on International Trade, Finance, and Security Economics: Opening statement	89
Grassley, Hon. Charles E., a U.S. Senator from the State of Iowa: Opening statement	91
Kaufman, Richard F., general counsel, Joint Economic Committee	92
Hamilton, James, former assistant chief counsel, Senate Watergate Committee	103
Trott, Stephen S., Assistant Attorney General, Criminal Division, U.S. Department of Justice	139

SUBMISSIONS FOR THE RECORD

WEDNESDAY, JULY 25, 1984

Kaufman, Richard F.: Summary of documents relating to Navy shipbuilding at the Electric Boat Division of General Dynamics	10
Paulisch, Eugene B.: Prepared statement	39

WEDNESDAY, OCTOBER 31, 1984

Hamilton, James:	
Prepared statement	109
Letter from the U.S. Department of Justice, dated August 11, 1983, to Mr. Hamilton concerning the exchange of information between the Department and the House Subcommittee on Human Resources	134
Kaufman, Richard F.: Prepared statement, together with attached charts	95

POINTS OF INTEREST

WEDNESDAY, JULY 25, 1984

Interview with Mr. Veliotis	4
Summary of documents	5
Contract bids	7
General Dynamics threatened to shut down the submarine program	8
Dispute over the basis for congressional relief	9

Page

Dispute over the amount of the settlement 9

WEDNESDAY, OCTOBER 31, 1984

Withholding of information by the Justice Department 90
Why the Senate Subcommittee on Administrative Practice and Procedure began an inquiry 91
Justice Department refused compromise on disclosure 91
White House got involved 92
Actions taken in the investigation of General Dynamics 93
The assignment of attorneys to the case 93
The state of the law regarding congressional access to executive branch materials 104
Historical information on Justice Department practices 105
Considerations regarding enforcement of the committee's subpoena 106
The number of lawyers working on the case is sufficient 140
Justice Department's policy is consistent 141
The history of executive privilege 141
Supplementation of the Newport News and General Dynamics cases 142
Subcommittee finds the Attorney General in contempt 158

NAVY SHIPBUILDING PROBLEMS AT GENERAL DYNAMICS

WEDNESDAY, JULY 25, 1984

CONGRESS OF THE UNITED STATES,
SUBCOMMITTEE ON INTERNATIONAL TRADE, FINANCE,
AND SECURITY ECONOMICS OF THE
JOINT ECONOMIC COMMITTEE,
Washington, DC.

The subcommittee met, pursuant to notice, at 11 a.m., in room SD-628, Dirksen Senate Office Building, Hon. William Proxmire (vice chairman of the subcommittee) presiding.

Present: Senator Proxmire.

Also present: Richard F. Kaufman, general counsel.

OPENING STATEMENT OF SENATOR PROXMIRE, VICE CHAIRMAN

Senator PROXMIRE. The subcommittee will come to order.

Gentlemen, I am delighted to have you with us this morning. I am going to ask to do something today a little unusual and rarely done, at least in the years I have been here in the committee, which has been a long, long time, but after I finish my opening statement, I'd like to ask Richard Kaufman, the committee's general counsel, to come down and sit at the table and to testify. We'll just make room between the two of you and he'll testify, and then I'll ask him some questions and then I'll call on you, Mr. Paulisch and Commander Allen.

Mr. PAULISCH. Very well, sir. A pleasure to be here this morning.

Senator PROXMIRE. This subcommittee has a long history of involvement in Navy shipbuilding procurement and claims filed by shipbuilders against the Navy. I held hearings on the General Dynamics claim several years ago, when it was pending, and I questioned Navy officials closely about the way it was handled and about the final settlement. The claim was based on two contracts for 18 688-class submarines, the last of which has not yet been delivered. Admiral Rickover told us in 1977 that he was so concerned about possible fraud in the claim that he wrote to his superiors to alert them about it. He said that in his letter. He detailed numerous instances of possible fraud.

Let me repeat that. Admiral Rickover, as you know, has the great reputation for fairness and accuracy and honesty in these matters. Admiral Rickover told this subcommittee in 1977 that he was so concerned about possible fraud in the claim that he wrote his superiors to alert them about it. He said that in his letter and detailed numerous instances of possible fraud.

The Navy's handling of the case was disturbing at that time, because it seemed as if then Secretary of the Navy Graham Claytor and then Assistant Secretary Edward Hidalgo had short circuited the normal claims review procedures and were personally negotiating with high-level officials of General Dynamics. The danger was that instead of a rigorous analysis of what the claims were worth and negotiations by professionals based on that determination, the political appointees of the Navy would engage in horse trading with the contractor and come up with a solution that was arbitrary, unsubstantiated, and unfair to the taxpayers.

General Dynamics' claim started out at $543 million, more than half a billion dollars—gigantic by any standards. And Navy had a Claims Settlement Board headed by Admiral Manganaro, which spent a year examining the claim and concluded that it was worth $125 million, less than a quarter of that claim, including $29 million for the costs and risks of going to court. All the Manganaro board could substantiate in the claim was $96 million, $96 million out of a claim of $543 million.

But Navy Secretary Graham Claytor and Assistant Secretary Hidalgo thought otherwise, and they personally negotiated an arrangement to settle the claim on an entirely different basis than it was worth.

General Dynamics told the Navy that the claim was going to be increased to $843 million and although it was never formally changed, the claim was settled on the basis of the higher amount. The Navy ended up giving General Dynamics about $634 million.

The circumstances of the settlement and the Navy's role in it have never been fully explained.

Was the claim false? The Justice Department investigated for nearly 4 years and ended up by dropping the case.

P. Takis Veliotis, former vice president of General Dynamics, former member of the board of directors and former general manager of the Electric Boat Shipyard, says the claims were falsified, and he made other allegations against his former employer.

I recognize that he is under indictment and a fugitive from justice. He may have ulterior motives and self-serving reasons for making his allegations. But those allegations were too serious to ignore. I therefore asked staff to look into them and to provide preliminary results of the effort by the end of July.

I also asked General Dynamics to cooperate with our inquiry. At the request of David S. Lewis, chairman of the board of General Dynamics, I met with him in my office on May 16 of this year. At that meeting Mr. Lewis offered to cooperate and said that all the files that had previously been turned over to the grand jury and had been returned to the company would be made available to the staff of this subcommittee.

I asked Mr. Lewis to follow up on his promise several times, without success. Then in a letter dated June 29, he withdrew his offer to give us access on grounds which appeared to me spurious. Mr. Lewis has simply reneged on his agreement to cooperate with this subcommittee.

As I said, gentlemen, before hearing our first witness, I will ask Richard Kaufman, the general counsel for the committee, to present a summary of the information obtained by the staff per-

taining to the Veliotis allegations. I'm taking this unusual action for several reasons: One, because Mr. Kaufman has done a tremendous amount of work on this for many years and because this is an extraordinarily voluminous situation, as you might expect. There's a great deal of data available—far more than we could bring to the hearing room and duplicate and make available to all the press that might be interested in it.

So I would like to suggest that if the members of the press would like to get more details than are available, they will be made available at SD—Dirksen, that is—this building, that is—G-01. That's on the first floor in the Joint Economic Committee room.

And information presented by Mr. Kaufman and all documents will be made part of the record.

Mr. Kaufman, go ahead.

STATEMENT OF RICKARD F. KAUFMAN, GENERAL COUNSEL, JOINT ECONOMIC COMMITTEE

Mr. KAUFMAN. Thank you, Mr. Vice Chairman.

I will begin by reading the summary and conclusions from the staff summary that I prepared for you.

This summary document reviews a number of materials which are mainly internal reports and other documents from the General Dynamics Corp., and it's through the review and analysis of those documents that we were able to come to the following conclusions, based on that evidence:

First, internal documents of General Dynamics and the Electric Boat Division lend support to major portions of P.T. Veliotis' allegations about the Navy shipbuilding program. The allegations concern poor performance by the shipyard as the cause of the overruns on the SSN 688 submarine program, a buy-in to the contract, efforts to withhold information and deceive the Navy. Use of inflated claims to obtain reimbursement from the Navy and use of threats to stop building the submarines in order to get the Navy to agree to a settlement of the claim.

Second, conditions in the Electric Boat Shipyard began to deteriorate soon after the award of the Flight 1 contract for seven submarines. From 1971, conditions grew steadily worse, largely due to poor management, inadequate planning, inefficient use of labor resources, and low productivity.

These factors, combined with the underestimates of cost to construct the ships led to a huge cost overrun and great delivery schedule delays on the contracts.

Third, there is evidence to support the charge that General Dynamics bought into the contract for the Flight 2 submarine by proposing an unrealistically low bid, knowing that the Flight 1 schedules were slipping and the costs were overrunning and that the scheduled delays and overruns on those ships would affect the Flight 2 ships.

Fourth, the evidence suggests that high officials of the corporation withheld information about the poor conditions in the shipyard from the Navy and from their own board of directors of the corporation. At the same time, problems attributable to the Navy were exaggerated, in order to support the contractor's claim.

Fifth, internal documents of the company raise serious questions about the appropriateness of the actions of the top Navy civilian officials who personally negotiated the settlement of General Dynamics' claim. The documents indicate that Navy officials collaborated with the contractor to jointly contrive an explanation for the settlement that would be approved by Congress. Navy officials and the accounting firm of Coopers & Lybrand apparently allowed General Dynamics to delete important information from an audit report commissioned by the Navy, prior to its publication.

I would like to go through the remainder of the summary of the documents by first saying something about my interview with Mr. Veliotis. We spent about 3 days, a total of nearly 10 hours of close——

Senator PROXMIRE. Let me just interrupt to say at this point, Mr. Veliotis was a fugitive. He was residing in Greece.

Mr. KAUFMAN. That's correct.

Senator PROXMIRE. And you went to Greece to interview him at what time? What date?

INTERVIEW WITH MR. VELIOTIS

Mr. KAUFMAN. I went there on March 21, and then spent 3 days with him in discussions in which he detailed at great length the information he said that he was willing to give to the Government, in order to cooperate with the Government and bring to light the facts about General Dynamics and the operations of the shipyard. He said that the claims were, in fact, falsified, and he said that this came about after there had been very poor estimating of the cost of the first contract for the first seven ships, the cost overruns and scheduled delays becoming very quickly known and requiring the company to, in their judgment buy into the second contract by bidding low, knowing the costs would exceed the bid and knowing that the delivery schedules could not be met.

The strategy was to recover the claims—excuse me—to recover costs overruns that they knew would occur on this contract through claims and to blame the Navy for the problems in the shipyard by accusing it of providing late drawings, late designs, and numerous change orders, making it difficult for the shipyard to construct the ships.

The real problem in the construction of the ships, according to Mr. Veliotis, was a combination of poor management, poor planning, poor use of labor resources, and low productivity. He mentioned that there had been two shipyard reorganizations in the course of only a few years and these were promulgated by the difficulties in the construction of the ships.

Further, he said that a key decision in the course of the negotiations for the settlement with the Navy was the decision to threaten the Navy with a shutdown of the shipyards, as far as the 688 program was concerned. That is, the company would threaten to stop work on the submarines as a way to apply pressure on the Navy to agree to a favorable settlement to the company. He said the Navy was very concerned, not only about the 688 attack submarine program but also about the Trident Program, which was also being built by the company in the same shipyards at the time.

SUMMARY OF DOCUMENTS

The documents, Mr. Vice Chairman, to move on to a summary of what materials we were able to obtain show, first, the conditions at the Electric Board Shipyard were poor, were recognized as highly inefficient and difficult to control, as early as 1972, and according to some documents, as early as 1971. And some of the documents say that the deterioration had been going on at least since 1970. They show the schedules were slipping at this early stage, that costs were overrunning on the first ship and that there would be a domino effect on the other six ships that were then under contract.

In an August 1, 1973, report from an official at the shipyard to the director of planning, it was stated that the schedules that had been agreed to for ships were then unattainable. Officials knew, according to these documents, in 1973, that a claim was necessary to recover the overruns. In a memorandum from the program manager for the submarine construction project to the general manager, Mr. Pierce of the shipyard, said, and I quote, "We'll never be able to make a claim hold up if we are reporting inadequate manning."

The inadequate manning referred to shortages of skilled labor that were then present at the yard, inability to apply the right labor resources to the right job to get the manufacturing done. The solution taken to this problem was to delete discussion of manning and facts about manning and demand power—skilled manpower shortages—from the reports then provided to the Navy.

Documents in the following years detail similar problems. There was a special study in 1974 which was apparently ordered by the chairman of the board, Mr. David Lewis, which showed, according to a transmittal note sent to the general manager by the controller of the company at that time, that there was not enough skilled workers, had not been enough skilled labor in the shipyard since 1970, and that part of the problems they were having with the 688 program was a result of efforts to keep the Trident Program on schedule. Those efforts were delaying the 688 program, according to the memo.

In 1974, a company memo states that shipyard production has been going downhill since 1970 and stated that the special study I just referred to forecasts more of the same.

Another memo in 1974 from the program manager of the submarine said that there was a failure of the manufacturing sector to meet manufacturing commitments. These problems in the shipyard were recognized not only by shipyard officials but by the company's own outside auditors. Memos from the Arthur Andersen auditing firm reflect the same kinds of concern that was then in the shipyard. A memo from one of the auditors to General Dynamics in 1976 said that the 688 program appears to be making less progress than anticipated and that it projects no profits on the first contract.

Another memo later in 1976 from the Arthur Andersen firm states that the auditors had told Gordon McDonald, who was then a vice president of General Dynamics and later became general manager of the shipyard, that statistics indicate the picture on the 688 program has worsened a good deal in the last 6 months, and that the board of directors should be informed.

These problems were also recognized by David Lewis, chairman of the board. He wrote several memos during this period to shipyard management, bringing to their attention the deterioration of the conditions and productivity in the yard. And in 1977, in January of that year, he made a visit to the shipyard, and the day after his visit, wrote a memo to Mr. McDonald, who was general manager at the time. He said that his visit was very revealing and very painful, that he discovered that total output of the yard had not increased, despite the fact that there had been a 100-percent increase in the number of workers assigned to many of the ships.

And I'd like to read a few passages from the memorandum that Mr. Lewis sent to Mr. McDonald.

Senator PROXMIRE. Before you do that, let me just see if I understand.

You're saying there was a 100-percent increase in manpower at the shipyard and no increase in production?

Mr. KAUFMAN. Yes, sir.

Senator PROXMIRE. The productivity would have had to just drop in half.

Mr. KAUFMAN. According to the conclusion drawn by Mr. Lewis at the time.

Senator PROXMIRE. In other words, you could have twice as many people there, but producing not one bit more result.

Mr. KAUFMAN. Exactly.

Senator PROXMIRE. OK. Go ahead.

Mr. KAUFMAN. Mr. Lewis said in his memo, and I quote:

"In the areas we visited there are hundreds and hundreds of people who are operating completely without supervision. I doubt that most of our people really want to loaf. The word must be out that Electric Boat badly needs people and will hire them whether there is work to be done or not."

The second quote:

"The condition of the brandnew building, No. 260, is the most deplorable of any operation I have seen in my life. There is no question that poor working conditions result in poor personnel performance and poor operational results."

And the final quote:

"I am deeply concerned about the future of Electric Boat. We have seen our schedules slipping, our forecasted cost to complete increasing, and we have been hit by several quality control problems, mostly simultaneously."

There are several things very significant about those statements, Mr. Vice Chairman. For one, you'll notice that in none of them does he mention the Navy as a cause of the problems in the shipyard. This is an internal memorandum, an internal communication to his shipyard manager, and he's telling the manager that there are problems in the yard, and they were unrelated, according to this statement, to whatever difficulties the company may have been experiencing with Navy supervision and the management of that program.

Second, the visit and the memorandum occurred in late January 1977. That was just 2 months after the company had filed its claim for $544 million, which you mentioned earlier, against the Navy.

In that claim, of course, it was implicit that the Navy was fully responsible for the cost overruns being experienced by the shipyard. But the memorandum that I have been discussing, it indicates the contrary. Just a little more than 2 months following that memorandum of January 1977, Mr. Lewis then told his own board of directors that productivity was improving at the Groton yard.

There's also evidence from the documents that there was, indeed, a buy-in to the second contract. This evidence is mainly statistical and the result of taking a look at the juxtaposition of events that occurred before and at the time of the bid for the second contract and what happened right after it.

I might mention here, Mr. Vice Chairman, that the full cost of the two contracts had originally been estimated at about $1.2 billion. The most recent estimate for the cost of these contracts is $3 billion.

Senator PROXMIRE. $1.2 billion was the original estimate and now it's $3 billion?

Mr. KAUFMAN. Yes, sir.

Senator PROXMIRE. A cost overrun of 200 percent.

Mr. KAUFMAN. Yes, sir. And I should point out also these are only the costs of the contract. There are other costs associated with that problem that were unrelated to these contracts. Things that the Navy had to do and that other contracts may have had to do for this program. We're only talking about the contracts at General Dynamics.

CONTRACT BIDS

The bid for the first contract offered to build the ships at a cost of about $61 million each. The bid for the second contract was for about $77 million each. In real terms, if you adjust for the inflation, between the times of those two contracts, they're very close together. As I pointed out earlier, the company knew at the time of the second contract, it was having problems with the first contract, the costs were overrunning, and that it would not be able to meet either its cost or its scheduled contractual commitments.

The documents further show that in preparing the bid, Electric Boat's shipyards reduced the number of man-hours that was incorporated into the bid at a later period in the process of preparing that bid. It took about 115,000 hours out of the bid, indicating that they could build that ship under the second contract, using about 4.3 million man-years per ship.

The documents also indicate that following the discussions with Mr. Lewis in both Groton, CT, and St. Louis, where the company was headquartered, that another 300,000 hours of manpower were taken out of the estimates per ship just a few days before the bid was finally submitted to the Navy.

The final bid estimated that they could build the ships for about 4 million man-hours each, which was very close, if not the same as they had estimated for the first ship. In fact, it's taken them 7 million man-hours each to build that ship and the total amount of man-hours expended on this program under the second contract grew from about 40.5 million man-hours to 6 million in the course of that program.

Less than 3 months after the contract was awarded for the second group of submarines, Electric Boat Co. revised its schedule for the first seven submarines, stretching out the delivery time on an average of 6 months per ship. And the question is raised whether the company knew what it did, and when the contract was awarded, that the schedules for the first group of submarines were already slipping, whether it understood that there was a domino effect of the slippages and cost overruns on the first batch of ships that would influence the second contract, and whether it knew that the schedules and the man-hour estimates were unrealistic.

Finally, Mr. Vice Chairman, to sum up the last section of documents that we were able to review, they raise several questions about the way the settlement was finally negotiated between the Navy and the General Dynamics Corp., and in some ways revelations from these documents about the negotiations and the role that the threat to shut down the submarine program played raised some of the most troublesome questions.

GENERAL DYNAMICS THREATENED TO SHUT DOWN THE SUBMARINE PROGRAM

At that time Mr. W. Graham Claytor was Secretary of the Navy. He testified to Congress in 1979 that the first time he knew of the threat to shut down the 688 program was in March 1978. Documents show that these threats began to be made at least as early as August 1977. Further that there was an informal commitment by the Navy Secretary at around the same time or shortly thereafter to apply to Congress for financial relief for the corporation under the Financial Relief Act, known as Public Law 85-804.

Most of this information, by the way, Mr. Vice Chairman, comes from the minutes of the board of directors of the corporation, from the minutes of the executive committee of the corporation, as well as from internal memos from officials of the company.

Following that August statement that the company might shut down the 688 program, in November 1977, according to minutes of the board of directors, the Navy agreed that it would promptly process the claim and that there would be no finding by the Navy contracting officer, who at that time was trying to review the claim in the normal procedure, with respect to the claim while the Navy was processing it to completion through negotiations at high levels between Navy officials and company officials.

There was also an assurance given in November 1977 that the Navy would seek financial relief under Public Law 85-804.

You mention in your statement, Mr. Vice Chairman, that there was a Claim Settlement Board in the Navy headed by Admiral Manganaro, which was attempting to review the claim. On December 1, Assistant Secretary Edward Hidalgo removed the claim from the Manganaro board nearly 11 months after the Manganaro board's work on it—shortly before the Board was scheduled to complete its work. It later returned the claim to the Board after complaints were made in Congress and elsewhere, and as Mr. Hidalgo concedes, under pressure. But the delay meant that there would be no finding of a legal entitlement under the claim in 1977.

The finding would have to be made early in 1978. The significance of this is that for purposes of its public financial reports which it must file with the Securities and Exchange Commission, it would not be required to report a loss on the submarine program for the year 1977, inasmuch as there had been no finding from the Navy's contracting officer about the value or the worth of the claim.

DISPUTE OVER THE BASIS FOR CONGRESSIONAL RELIEF

There were then meetings throughout December, January, early in the year of 1978 between the Navy and high level officials of the company. There were two subjects of discussion. One was the basis for the relief that would be applied for to Congress. The Navy felt initially the relief should be based on the possible bankruptcy of the company. The company argued strenuously against this situation, saying it was not facing bankruptcy, that it was in good financial health and that the basis should be on the grounds of an inequitable contract, unusual inflation, problems caused by the Navy, and the like. Eventually, the Navy agreed with the company's position and that was, indeed, the basis for the relief that was applied for through Congress.

In January, by the way, Mr. Hidalgo asked the company to help him prepare the language that would go into the Navy Secretary's explanation to Congress as to why this relief was necessary.

DISPUTE OVER THE AMOUNT OF THE SETTLEMENT

A second dispute was over the amount of the settlement. There was an impasse during March over exactly how much the Navy would be willing to pay to the company. It's unknown exactly how much they were offering at that time, but at that point the company issued a formal notice that it was going to stop working on the submarine program. That was then followed by emergency kinds of meetings between the company and the Navy. Some Members of Congress were involved in those meetings and an agreement was reached to postpone the shutdown of the yard by 2 months from the time they were going to do it to a day in June 1978.

In June 1978, just a few days before that postponement was to expire, an agreement was reached and the claim was settled.

I think you mentioned in your statement that the Navy paid or obligated itself to pay $634 million to the company under the terms of the agreement.

That concludes my summary of the documents.

[The complete summary of documents relating to Navy shipbuilding, as presented by Mr. Kaufman, follows:]

SUMMARY OF DOCUMENTS RELATING TO NAVY SHIPBUILDING AT THE ELECTRIC BOAT DIVISION OF GENERAL DYNAMICS

Presented to the Subcommittee on International Trade, Finance, and Security Economics of the Joint Economic Committee

By

Richard F. Kaufman

July 25, 1984

Summary and Conclusions

1. Internal documents of General Dynamics and the Electric Boat Division lend support to major portions of P. T. Veliotis' allegations about the Navy shipbuilding program. The allegations concern poor performance by the shipyard as the cause of the overruns on the SSN688 submarine program, a buy-in to the contract, efforts to withhold information and deceive the Navy, use of inflated claims to obtain reimbursement from the Navy, and use of threats to stop building the submarines in order to get the Navy to agree to a settlement of the claim.

2. Conditions in the Electric Boat shipyard began to deteriorate soon after the award of the Flight 1 contract for seven SSN688 class submarines. From 1971, conditions grew steadily worse largely due to poor management, inadequate planning, inefficient use of labor resources, and low productivity. These factors combined with the underestimates of costs to construct the ships led to huge delivery delays and cost overruns on both SSN688 class contracts awarded to Electric Boat.

3. There is evidence to support the charge that General Dynamics "bought-in" to the contract for the Flight 2 submarines by proposing an unrealistically low bid, knowing that Flight 1 schedules were slipping and the costs were overrunning and

that the schedule delays and overruns on those ships would affect the Flight 2 ships.

4. The evidence reviewed suggests that high officials of the corporation withheld information about the poor conditions in the shipyard from the Navy and the Board of Directors of the corporation. At the same time, problems attributable to the Navy were exaggerated in order to support the contractor's claim.

5. Internal documents of the company raise serious questions about the appropriateness of the actions of the top Navy civilian officials who personally negotiated the settlement of General Dynamics' claim. The documents indicate that Navy officials collaborated with the contractor to jointly contrive an explanation for the settlement that would be approved by Congress. Navy officials and the accounting firm of Coopers & Lybrand apparently allowed General Dynamics to delete important information from an audit report commissioned by the Navy prior to its publication.

Background

Earlier this year, the staff was asked to try to learn whether there is any basis for recent allegations reported in the press of wrongdoing in Navy shipbuilding. P. Takis Veliotis, former Vice President of General Dynamics and General Manager of its Electric Boat Division, had reportedly accused General Dynamics of improper actions, including the filing of a false claim against the Navy on its 688-class submarine contracts. A Subcommittee of the Joint Economic Committee, under the Chairmanship of Senator William Proxmire, conducted an investigation of and held hearings about the General Dynamics claim during 1977-1979. In a separate matter, Mr. Veliotis was indicted in September 1983 for taking kickbacks from a supplier to Navy ships of Electric Boat as well as commercial ships at another shipyard of General Dynamics. The press has reported other instances of kickbacks to Navy shipbuilders. In addition, the Litton shipyard in Pascagoula, Mississippi, has been indicted for filing a false claim and is awaiting trial.

This staff study concerns the allegations that General Dynamics filed a false claim. The claim in question was filed in 1976 in the amount of $544 million. At the time, General Dynamics had two contracts to build 688-class submarines. The first was awarded in 1971 for seven ships called Flight 1. The second was awarded in 1973 for 11 ships called Flight 2. Previously, General Dynamics had filed a claim on the Flight 1 contract for $220 million for which the Navy paid $97 million. A year after filing the second claim, General Dynamics notified the Navy that it would incur much greater costs than it had estimated

and that it planned to increase its claim. While the claim was never formally increased, it was settled on the basis of the higher amount, $843 million. Under the terms of the settlement, the Navy has paid or obligated itself to pay about $634 million. The last of the 18 submarines is scheduled to be delivered to the Navy in late 1984 or early 1985.

After attempting unsuccessfully to obtain information about Mr. Veliotis' allegations from the Justice Department, the Subcommittee directed the staff to interview Mr. Veliotis in Greece where he was residing as a fugitive from justice on the kickback charge. On March 21, 1984, I went to Greece and interviewed Mr. Veliotis in Athens over a period of three days. After my return, I interviewed other persons knowledgeable about the claims. In the course of my interviews and through other staff efforts, information and a large number of documents relevant to the claims and the Navy's actions have been obtained, some from government and some from private sources. The information gathered in some repects goes beyond the allegations reported in the media.

In filing its claim, General Dynamics alleged that construction of the submarines had been delayed primarily by difficulties caused by late Navy-furnished design drawings and thousands of Navy change orders. The delays increased the costs of the ships. General Dynamics said all the delays were caused by the government and, therefore, the government should pay for all of the overrun.

Interview With Veliotis

In the interviews, Mr. Veliotis asserted that the cost overruns were due mostly to problems in the Electric Boat shipyard and not to late designs and Navy change orders. He said that initially the shipyard had underestimated the technical difficulties and costs of the 688-class submarines because it viewed them as simply a larger version of the previous submarines built at Electric Boat without proper regards for the technical requirements of the new ships. By 1973, he said, problems in the shipyard and in the management of Flight 1 were already well known and it was recognized that cost and schedule commitments could not be met. The decision was then made to "buy-in" to the Flight 2 contract by submitting a low bid knowing that actual costs would be much higher. In addition, shipyard officials were directed to falsify percentage of completion estimates in order to collect higher progress payments from the Navy.

It was decided to bid about the same low price for Flight 2 as had been bid for Flight 1, and to get reimbursement for the cost overruns through claims. These decisions, Mr. Veliotis said, were made by David S. Lewis, Chairman of the Board, General Dynamics, in meetings at Electric Boat and corporate headquarters in St. Louis. In these meetings, Lewis allegedly directed that the bid be lowered, over the objections of shipyard officials J. D. Pierce, General Manager, and Arthur Barton, Comptroller. One of the key methods for trimming the bid was to reduce the estimated manhours necessary to build each ship. According to Mr. Veliotis, Mr. Lewis said that the company would never be questioned about labor-hours even though it was said the ships

could be built with 4 or 4.5 million manhours each when it really takes six million manhours.

The second claim was intended to obtain reimbursement for all cost overruns not covered by the settlement of the first claim. Mr. Veliotis said one of the reasons David Lewis believed the threat to close down the 688 program would expedite settlement of the claim on favorable terms was because he knew how vital the Trident was to the Navy. The Trident was also being built at Electric Boat and could be affected or appear to be threatened if work was stopped on the 688's. After notice of the shutdown was formally given to the Navy, negotiations moved more quickly, Veliotis said.

Veliotis said that, although he did not become General Manager of Electric Boat until October 1977, he had two ways of learning about what had happened. From 1973-1977, he headed General Dynamics' Quincy shipyard. During this period, he was regularly consulted by General Dynamics about matters at Electric Boat and was included in many meetings between officials of General Dynamics and Electric Boat. In addition, Mr. Lewis had asked him to become General Manager of Electric Boat in April 1977, and for six months he reviewed its books and records and interviewed all the key employees. He said the 1976 claim was discussed in the meetings and he confirmed the fact that it was falsified in his interviews and in his review of the records.

He stressed that the causes of the cost overruns were the low bids and inefficiency in the shipyard -- poor estimates, poor management, poor labor performance, and low productivity. He

said that the company's argument that the 35,000 Navy changes caused Electric Boat's problems had a grain of truth but was grossly exaggerated. A change order is not a problem unless it forces the shipbuilder to undo work already done. Most of the changes, he said, were necessary refinements and did not require rework. He said it was far more important that he fired 3,000 employees on the day he became General Manager and eliminated many additional jobs by the end of the year. He argued that the reduction of the workforce without a reduction of the workload proved the shipyard had been mismanaged and was incurring unnecessary costs.

Conditions At Electric Boat

Internal documents of General Dynamics lend support to major portions of Mr. Veliotis' allegations. For example, Electric Boat officials knew at least as early as 1972 that construction schedules were slipping and costs were getting alarmingly high. A 1972 memo from C. B. Haines, Jr., the 688 Deputy Program Manager, to J. D. Pierce warned about cost increases on the first ship and the danger that later ships would be affected, and recommended ways to achieve better coordination in production. An April 11, 1973, technical note by an Electric Boat official states the shipyard's performance began to deteriorate in July 1972 and cites three factors:

"1. The protracted labor negotiations which dragged on from July to October resulted in low worker morale and lower-than-normal productivity.

2. The shipyard refrained from hiring during the labor negotiations in spite of the fact that the scheduled workload was rising.

3. The overhaul and repair workload rose significantly in the fall of 1972 with the arrival of SSBN616 and SSN607, plus the growth of emergent work on SSN571."

The note goes on to say that the 688 class began to fall behind schedule in mid-1972 and has continued to slip, that there has been a shortage of experienced welders, and a shortage of machine shop capacity. The date of this note is significant because the bid for 688 Flight 2 was sent to the Navy only two days earlier.

On August 1, 1973, a "Report on Planning and Controls Progress Toward Solving Cut Problems" was completed and sent, two weeks later, to N. D. Victor, Director of Planning in the shipyard. The report found there was no training program for new hires, no effective advance planning function, and "no effective plan to minimize effect of late drawing issue." It said problems with the first boat where there were people with nothing to do seems to sum up the whole shipyard problem. The report then characterized the shipyard situation, "about now or six (6) months ago:"

* "Work areas -- inadequate
* Work area manning -- inadequate
* Work flow -- stalled in certain critical areas

* Material -- not available in critical areas

* Information -- running six (6) months late

* Methods and tooling -- not fully developed

* Operations routine -- broken

* Trades stability -- massive hiring, frequent lage shifts of existing people among work areas

* Schedules -- no longer closely matched performance, represent unattainable targets

* Machine shop -- massive farm out"

Problems in coordinating the work force together with shortages of certain skills led to manpower availability problems. Throughout 1973, Electric Boat informed the Navy in its "Critical Items Letter" reports that there were insufficient workers availale for shipboard work. As a result, "Manhours are not being expended at the rate required to meet SSN688 class ships' schedules." A handwritten note from Z. Henry Hyman, the 688 Program Manager, to J. D. Pierce says, "We'll never be able to make a claim hold-up if we are reporting inadequate manning." The note states it would be better to stop reporting on the manpower item as soon as possible. The December 21, 1973, Critical Items Letter states that the manpower item will no longer be reported and it is omitted from future reports.

Problems in the shipyard were acknowledged freely in internal communications and reports over the next several years and seen to continue growing worse. The documents emphasize difficulties

with material, the flow of information from one group to another, organization, and manpower. Delays in getting information from the Navy design agent and Navy change orders are sometimes mentioned but not given great weight. Memoranda in the summer of 1974 are illustrative. A July 23, 1974, memo to J. D. Pierce from J. J. Gagnon, Pipefitter Trade Manager at the shipyard, discusses problems with information, operations support, planning and schedule discipline, and manpower. One finding is that "schedule dicipline (sic) is very poor in all areas." Another memo to J. D. Pierce dated July 24, 1974, states that material problems are not improving and "There seems to be complete confusion between Planning/Control, Production Control, and Material Control regarding each other's functions and responsibilities."

Inaccuracies in projecting costs led to a special study of shipyard problems which was forwarded by A. M. Barton to J. D. Pierce and M. C. Curtis, Deputy General Manager of Electric Boat, on August 9, 1974. In his cover memo, Mr. Barton, who was Comptroller of Electric Boat, states that the picture is not very satisfactory and shipyard performance must be improved. Concerning manpower, he states that "there are not enough skilled people available nor were there ever since 1970, enough skilled people available, to satisfy the requirements of the 688 program." He goes on to say that "All recognized that in order to keep the entire Division from collapsing, the schedules must be achieved." He suggests that the attempt to build the Trident submarine on schedule was causing delays on the 688 sumarines and

that a partial solution might be to allow the Trident to slip while work is accelerated on the 688's.

At the same time that there were shortages of certain skilled workers, it was acknowledged that there were excessive workers in the yard. The minutes of a meeting of the SSN688 Task Force held Monday, August 12, 1974, reports "Mr. Curtis states that the indicators for the week of August 15th were the poorest recorded and August 9th was the lowest ever recorded. The 690 appeared to be so overmanned that no one could move on the ship to do any work." A memo dated September 5, 1974, from R. J. Masi to B. Wickham, who worked on budgeting under Barton, states "There is only one real problem within the Division today. That problem is our seeming inability to build ships. Since the early 1970's, we have gone steadily downhill relative to production and our recent special study forecasts more of the same." Z. Henry Hyman reports in a December 27, 1974, memo to M. C. Curtis that the fundamental problems are a failure of manufacturing to meet its commitments for the completion of manufacturing, and a failure to distinguish between the status of work not affected by design changes and work that is affected by design changes. He concludes, "Design changes are impacting the shipyard, but the impact of the design changes does not appear to be as great as some would have us believe."

General Dynamics' outside auditors, Arthur Anderson & Co., knew there would be possible losses on one or both of the 688-class contracts, unless there were recoveries of the overruns from the Navy through the claims. The first claim was filed by General Dynamics on February 14, 1975. One of the Arthur

Anderson auditors wrote in a memo for the files, February 6, 1975, "If the Division is unsuccessful in its claim against the Navy, they would have a $50 million loss which should have been booked in 1974." A communication from Arthur Anderson & Co. to General Dynamics dated April 12, 1976, states "the 688 program appears to be making less progress than anticipated and projects no profits on the first contract."

In a memo for the files on July 1, 1976, an Arthur Anderson auditor said that he had told Art Barton of Electric Boat that the labor and overhead overrun would be between $225 and $250 million. According to the memo, Mr. Barton said he did not make projections of potential overruns anymore and had not done so for the past one-and-one-half to two years because the last time he challenged a projection by the operations people, he had been severely criticized. On that occasion, Mr. Mel Curtis was projecting 25 million manhours to complete the first 688 flight which Mr. Barton said was unreasonably low. A July 30, 1976, Arthur Anderson memo reports that the auditors had told Gordon MacDonald, Vice President of General Dynamics, and Art Barton that "statistics indicate that the picture on this program has worsened a good deal since December 31 and pointed out that we feel the Board of Directors should in some way be informed of our deep concern with this program." The memo also states that MacDonald and Barton agreed with the auditors that August and September results should verify their position that inefficiency has peaked and productivity is improving. But a September 24, 1976, memo from one of the auditors states, "Projected productivity improvements have not been achieved." The memo also

observes, "Because of the poor performance of the Division on the 688 program, there have been major management changes at the Division during 1976. The General Manager, Mr. Pierce, and the Deputy General Manager, Mr. Curtis, both resigned and Gordon MacDonald, Executive Vice President-Finance of General Dynamics, is the Acting General Manager."

Corporate headquarters in St. Louis also expressed its concern about conditions in the shipyard through internal communications. In an interoffice memo, November 12, 1973, David S. Lewis ordered a special evaluation and an updated estimate of the costs of the 688 program. In his memo, Mr. Lewis tied his directive to the many difficulties experienced at Electric Boat, including the strenous efforts to improve productivity. The evaluation that resulted from the directive appears to be the special study forwarded by A. M. Barton to J. D. Pierce and M. C. Curtis on August 9, 1974, referred to earlier. On June 19, 1975, Mr. Lewis sent a memo to J. D. Pierce complaining tha the capital facilities progran had not gone well and that the original master plan had not been thought out. On January 26, 1977, Lewis visited Electric Boat and found that conditions had worsened since 1973.

Mr. Lewis told Mr. MacDonald in a memo dated January 27, 1977, "The short visit we made to the yard on 26 January was very revealing and extremely painful." He reported that the records show that the total output on the 688 contract has not increased at all, even though the number of people assigned to many of the ships have been increased by 100 percent or more. He then made several pointed observations:

* "In the areas we visited, there are hundreds and hundreds of people who are operating completely without supervision. I doubt that most of our people really want to loaf...The word must be out that Electric Boat badly needs people and will hire them whether there is work to be done or not."

* "The condition of the brand new building 250 is the most deplorable of any operation I have ever seen in my life...There is no question that poor working conditions result in poor personal performance and poor operational results"

* "I am deeply concerned about the future of Electric Boat...We have seen our schedules slipping, our forecasted cost-to-complete increasing, and we have been hit by several quality control problems almost simultaneously."

Mr. Lewis' memo was written about two months after General Dynamics had filed its second claim against the Navy. At a meeting of General Dynamics' Board of Directors on April 13, 1977, Mr. Lewis reported "that productivity is improving at the Groton Yard."

On November 28, 1977, the month after P. Takis Veliotis took over the yard, a memo was prepared by N. D. Victor for the new General Manager concerning schedules for building the remaining 688's. The memo states that a new study of the submarine program revealed earlier ships were "overprogressed." For example, one of the sumarines, SSN696, had been launched on a reported 76.5

percent progress, but the real progress was only 71.3 percent for that ship at that time. Mr. Victor's statement suggests that the company may have overbilled the Navy for progress payments by overestimating the percent of physical completion at the time ships were launched.

The Alleged Buy-In

General Dynamics was awarded the 688 Flight 1 contract on its bid to build the ships for $61 million each. The Flight 2 contract was awarded on the basis of a bid to build the ships for $77 million each. In real terms, adjusting for inflation from the time of the first contract, the two bids were virtually the same. On a unit basis, the most recent estimated costs to complete the contracts are $152 million each for Flight 1 and $178 million each for Flight 2. On a program basis, the total contract costs for the 18 submarines have risen from the original estimate of $1.2 billion to the present figure of $3.0 billion. At the time of the 1978 settlement, the cost to complete the two contracts was estimated at $2.67 billion.

There is some documentary evidence of how the company estimated the manhours required to build the ships at the time of the second contract proposal. The documents indicate that the number of manhours in the proposal was reduced after the proposal had been worked up at the shipyard and just prior to its submission to the Navy. Of course, direct manhour costs are only a small portion of the total costs to build a ship, but the manhours effect other costs as well as the costs of labor. They are thus a key indicator of overall construction costs.

According to a journal kept by J. J. Franklin, who worked in the planning office at Electric Boat, it was indicated in a meeting in G. A. Silverman's office on March 5, 1973, that "Corporate Office wants to bid 11 ships," an apparent reference to the Navy's desire to have 11 more 688's built. Mr. Franklin's journal states that in another meeting with Mr. Silverman who also worked in the planning office, on March 28, 1973, it was learned that "D. Lewis and staff will be here Friday to review 688 class proposal." A compilation of materials entitled Construction of FY'73-'74 SSN688 Class Submarines - Review Book, dated March 29, 1973, is comprised of tables of historical data, manpower, and material estimates to build the 688 second flight. The materials, which may have been compiled for Mr. Lewis' visit, include a manhour estimate for the first submarine in the second flight of 4.3 million hours. The materials indicate that future savings of 115,000 manhours per ship were included in the estimate on the basis of improvements in the shipyard and "yard learning of an institutional nature."

Company documents indicate that A. Barton and Z. H. Hyman traveled to St. Louis on April 5, 1973, to discuss the Flight 2 bid, and that Mr. Lewis reviewed the estimates prepared by Electric Boat on the same day. In any event, by April 9, 1973, the manhour estimates had been trimmed by another 300,000 manhours per ship. This "credit" of 300,000 hours was taken "to reflect our commitment to future improvement." The estimated manhours for the first ship in Flight 2 was lowered to four million and the estimate for the remaining ships adjusted

accordingly. The company's bid was submitted to the Navy on April 9, 1973.

The Navy awarded a contract to Electric Boat for seven 688's on October 31, 1973, and an option for four more was exercised on December 10, 1973. Less than three months later, on February 27, 1974, Electric Boat revised the delivery schedule for Flight 1, delaying deliveries by an average of six months. It seems reasonable to assume that the company had reason to know before the contract for Flight 2 was awarded that there would be a cost overrun on Flight 1 and that it would drive up the costs of Flight 2.

To place the bid estimates in perspective, it should be observed that, while a few hundred thousand manhours per ship were trimmed from the bid, the total manhours for Flight 2 has increased by several millions per ship. The original estimate of about 3.7 million manhours per ship has grown to about seven million manhours. In other words, even if the bid included an estimate of four million or 4.5 million manhours, there still would have been a large cost overrun.

It will be recalled that an Arthur Anderson auditor reported on July 1, 1973, that Mr. Barton had stopped making projections although he was skeptical of the shipyard's official estimate of the manhours needed to complete Flight 1. Mr. Barton had told the auditor that it was unreasonable to expect that the first seven ships could be built with 25 million manhours and that ever 31 million manhours then seemed too low. In fact, it required about 58 million manhours to build Flight 1. Whether Mr. Barton

agreed with the manhour estimate at the time the Flight 2 bid was submitted is unclear. The total number of manhours in the bid estimate for the 11 ships in Flight 2 was about 40.5 million. The actual manhours expended will be about 76 million.

Threats To Close The Shipyard And Settlement Of The Claim

Minutes of the meetings of the Board of Directors and the Executive Committee of General Dynamics and memoranda of meetings with the Navy by corporate officials add new information about the settlement negotiations in 1977 and 1978. After the claim was filed in late 1976, the Navy referred it to the Navy Claims Settlement Board, headed by Admiral F. F. Manganaro, for examination. Navy Secretary W. Graham Claytor took a strong interest in settling the claim, as it was one of two other large claims by Navy shipbuilders, and he assigned primary responsibility for its settlement to Assistant Secretary Edward Hidalgo.

In its August 4 meeting, the Board of Directors made known its view that management should continue to exert maximum pressure on the Navy and the Defense Department to obtain a settlement. Mr. Lewis states, in the minutes of General Dynamics' Executive Committee meeting of August 31, 1977, that he told Assistant Secretary Hidalgo that it might well become necessary to close down the 688 program at Electric Boat. The September 1, 1977, minutes of the Board state that Admiral Manganaro said the Navy plans to respond to the claim as a whole by the end of 1977, indicating the Claims Settlement Board would reach a decision about how much the claim was worth by that time.

The Executive Committee minutes for October 5, 1977, state that Mr. MacDonald was directed to contact Assistant Secretary Hidalgo and propose that the company would withold notice of intent to stop work on the 688 program until November 30, 1978, if the Navy agreed to certain conditions. These were that: (1) the Navy agree in writing that the company would not waive the right to declare a breach of contract due to the passage of time; (2) the Navy confirm in writing its intention to produce a final offer by December 31, 1977; (3) the Navy agree in writing not to make a "finding" about the claim prior to December 31, 1978, unless acquiesced in by the company; (4) the Navy confirm in writing its intention to seek relief for the company under P.L. 85-804 promptly after January 1, 1978. The next day, October 6, 1977, the Board of Directors was told that Mr. Lewis and other company officials had discussed the claim on September 21 with Secretary Claytor and Deputy Secretary of Defense Charles W. Duncan, and that Secretary Claytor indicated the Navy plans to respond to the claim by the end of 1977, and that he would ask Congress to restructure the 688 contracts under P.L. 85-804.

The Board was told on November 3, 1977, that, if the company serves a formal stop-work notice, the Navy would not seek an injunction but would sue the company for breach of contract and might shift the 688 contracts to other shipbuilders. Also, if the notice were served, the Navy would not proceed under P.L. 85-804. In response to assurances of promot processing of the claim by the Navy, "assurances that the Navy contracting officer will not make a finding as to the corporation's 688 claims while the course of action they plan to undertake is being pursued," and an

assurance that the Navy will present a P.L. 85-804 application to Congress, the company decided to defer serving a stop-work notice.

On December 1, 1977, Assistant Secretary Hidalgo ordered the Manganaro Board to stop working on the claim and to send all of the files on the claim to his office. Mr. Hidalgo's official explanation for this action was "to achieve organizational objectives of singleness of authority" by consolidating all responsibility for the claim under his office. He told Congress that the Board had authority to consider only the issue of Electric Boat's legal entitlement under the claim and that his office could deal with not only the issue of legal entitlement but also with the broader problem of the underlying reason for the claims. He denied that his directive about the claims to Admiral Manganaro amounted to "taking it away from the Board." Admiral Manganaro told Congress that, had the Board's work not been interrupted, it would have completed its review within two to four weeks from December 1 and he would have been able to prepare an offer to negotiate a settlement.

Admiral H. G. Rickover submitted to Navy authorities on December 10, 1977, a report on 18 elements of Electric Boat's claim which he believed should be investigated for possible violation of fraud or false claim statutes. Admiral Manganaro also referred to items in the claim considered "questionable" to the Navy's Office of General Counsel.

Minutes of General Dynamics' Board of Directors and several memos of company officials discuss meetings with the Navy in

December and January. A January 4, 1978, memo from G. E. MacDonald states that Mr. MacDonald and Max Golden, Vice President of General Dynamics, met with Mr. Hidalgo on December 8, 1977, to discuss various possibilities for structuring the relief case of P.L. 85-804. Mr. Hidalgo felt it should be patterned after the Lockheed and Grumman cases in which it was argued that the companies would face financial disaster without government relief from their contracts. General Dynamics argued that the total corporation could take the impact of the 688 program, that it is very healthy financially, and that the approach should be along the lines of government inaction, lead ship, escalation, fairness, design specifications, poor form of contract, and the like. Mr. Hidalgo protested that such an approach would incur resistance from "you know who in the Navy," and all the "top blue suits."

David S. Lewis and others met with Mr. Claytor and Mr. Hidalgo on December 21, 1977, to express concern with Mr. Hidalgo's approach to P.L. 85-804. Mr. Lewis reiterated that the company's finances were stable and urged another approach. Mr. Hidalgo insisted on the financial approach. According to a General Dynamics memo dated January 4, 1978, Mr. Hidalgo said that the company could not expect an adequate return if the claim was processed in the traditional manner under the strict terms of the contract and "it was important that we work together to develop the strongest possible case to obtain congressional support for a larger settlement under P.L. 85-804." Mr. Hidalgo said it would also be necessary for the company to take some fixed loss to gain congressional support. Secretary Claytor

informed the group that he and Secretary Duncan had been called to talk to the President about withdrawing the claim from Admiral Manganaro and that, while Hidalgo's group would complete the analysis, it was possible the claim would be reassigned to Admiral Manganaro as a compromise by the President. This, he said, would not affect the Navy's basic plan to proceed under P.L. 85-804.

David S. Lewis met with Deputy Secretary Charles W. Duncan, Jr., on January 3, 1978, to urge that the Navy not base its approach to P.L. 85-804 on a failing business concept and to say that, if a reasonable solution to the claim was not reached, the company would resume legal action. Later that month, Mr. Golden and Mr. MacDonald met with Mr. Hidalgo. Mr. Hidalgo explained that he had returned the claim to Admiral Manganaro under pressure and that, after talking with the Coopers & Lybrand accounting firm, he now understands General Dynamics' position on the financial condition of the company. He said he would be drafting language to explain the Navy's approach to the settlement and said he "would have no objection to any informal help from us in coming up with the right words." A memo from Mr. Golden and Mr. MacDonald says they replied they would try their hands on a statement. According to minutes of General Dynamics' Board, the corporation was working cooperatively with Mr. Claytor and Mr. Hidalgo to develop a document that would be the Secretary of the Navy's proposal to Congress under P.L. 85-804 to reform the 688 contracts.

However, in March 1978, discussions with the Navy reached an impasse over the amount the Navy was willing to pay under P.L.

85-804. General Dynamics rejected the Navy's offer and gave it a 30-day notice of intention to stop work on the 688 program on April 12, 1978. Senator Abraham Ribicoff called a meeting in his office of both sides to the dispute and, according to minutes of the General Dynamics Board, was shocked by the magnitude of the amounts involved and the Navy's offer. At the meeting, in which Mr. Lewis, Mr. Claytor, and Mr. Duncan took part, it was agreed that the two sides would consider a two-month extension of the stop-work notice in return for an interim payment to Electric Boat. In the meantime, Assistant Secretary Hidalgo would try to get a better feel for Congress' attitude.

Mr. MacDonald, Mr. Golden, and Mr. Veliotis met with Secretary Hidalgo on April 28, 1978, at which the Navy offered a minor modification of its original settlement offer, according to minutes of General Dynamics' Board. Meetings with Mr. Hidalgo continued in May and June and in June it was announced that the two sides had reached agreement.

In the meantime, the Navy had contracted with the auditing firm of Coopers & Lybrand to obtain financial data from General Dynamics to assist the Navy in its determination about the claim. The company was concerned about the sensitivity of the data and got an agreement from the Navy to hold it closely. It was also agreed that General Dynamics would be allowed to review the draft "for factual correctness" prior to the final report being published.

Coopers & Lybrand completed its review of company documents on March 23, 1978. On June 8, 1978, the Navy called Mr. Golden

to request permission to release the Coopers & Lybrand report to the General Accounting Office. General Dynamics violently objected to release of the data to anyone, including GAO, according to a June 9, 1978, memo. The company then advised the Navy that about one-third of the material in the report would have to be excluded before it could be released because of the sensitivity of the information.

A review of an early draft of Coopers & Lybrand's report reveals that the Navy engaged the firm to comment on four tasks: (1) the financial ability of General Dynamics to perform the 688 contracts if the claim is not settled until December 1978 or December 1979; (2) the impact of recognition of a loss on the contracts of $774 million and losses of smaller amounts; (3) the maximum loss General Dynamics could sustain on the 688 contracts and remain solvent; and (4) the reasonableness of General Dynamics' estimate that the cost to complete the contracts would be $2.67 billion. According to a note penned in the margin of the early draft, it was "reviewed with Hidalgo et al on 6/13/78." On this draft, a portion of task (2), all of task (3), and much material in the text are deleted. The final draft of the report dated June 19, 1978, reflects these deletions.

Joe Kehoe, who headed the Coopers & Lybrand report team, was interviewed by the FBI in January 1979 and was asked about a second report on General Dynamics. Mr. Kehoe said a report dated June 16, 1978, contained company-sensitive data and a discussion of decision alternatives that were being studied by the Navy. The second report dated July 19, 1978, eliminated this material. On February 9, 1979, Mr. Kehoe telephoned G. E. MacDonald to discuss the FBI interview and apparently described it to him at length.

Senator PROXMIRE. Thank you. There's a rollcall going, so I am going to have to run over and come right back.

Before I do that, let me ask you some very quick questions.

You said the evidence of a buy-in was statistical, that originally the company had indicated the cost to be $1.2 billion and that the latest estimate is $3 billion. How much of that was inflation, or did the $1.2 billion include an adequate estimate of inflation?

Mr. KAUFMAN. The $1.2 billion did include estimated inflation, Mr. Vice Chairman. There were always inflation provisions in Navy shipbuilding contracts, and presumably, in addition to the provisions in the contracts, the contractors would estimate future inflation and build that into their price, but they later complained that the inflation which occurred after the oil shocks of the early 1970's period exceeded by a great amount the——

Senator PROXMIRE. Would a comparison, therefore, be the man-hours? In other words, you had 4 million man-hours, as I understand it, originally estimated, and it turned out to be 7 million hours; is that right?

Mr. KAUFMAN. That's correct, Mr. Vice Chairman.

Senator PROXMIRE. And for that, you don't have to have any inflation on man-hours, that indicates a more precise estimate.

In addition to the original cost, there was a stretchout of the delivery time, which is a penalty, of course, the Navy has to pay also; is that right?

Mr. KAUFMAN. Exactly. And of course, the stretchouts of deliveries that led to many of the cost increases.

Senator PROXIMRE. Now you said the documents which you have just summarized lend support to major portions of Veliotis' allegations. Does this mean that there is evidence of wrongful and criminal action?

Mr. KAUFMAN. Senator, in the common usage of the term "wrongful," I think we can say that some of these actions were wrong. Practicing withholding information from the Government is, for a contractor to do, if that information is necessary for the Government to understand what is taking place with its contracts.

A buy-in—an intentional buy-in would be wrong, and it's frowned upon by the Government. Other actions of the company, I think, could be put in that category. Whether they're criminal, requires a more legalistic determination as to whether they actually violated criminal statistics on the books, and that's not anything I would be qualified to judge.

Senator PROXMIRE. Is there a criminal statute on buy-ins?

Mr. KAUFMAN. There may be criminal statutes that relate to a buy-in approach to a contract, if there's willful deceit and deception and intentional misrepresentation being practiced at the same time.

Senator PROXMIRE. Now, how much documentation you described came from Mr. Veliotis and how helpful was he in your efforts?

Mr. KAUFMAN. None of the documents came from Mr. Veliotis, Mr. Vice Chairman. His assistance was in describing the internal mechanisms of the corporation, how contracts were managed, what the problems of the shipyard really were, as opposed to what the shipyard was saying they were, and in providing information about what to look for. Once we were able to understand what it was that

we needed to find, it was much easier to identify the kinds of problems I have discussed in the documents, having obtained those documents. But again, the documents were not obtained from Mr. Veliotis.

Senator PROXMIRE. Without revealing the sources of the documents, will you tell us, to the best of your knowledge, to what extent have they been known to the Justice Department and the Securities and Exchange Commission?

Mr. KAUFMAN. To my knowledge, the same documents are known to both agencies or should have been known to both agencies.

Senator PROXMIRE. Did either Justice or SEC, prior to closing down their investigation, make known to this committee, others in Congress or the Navy, the existence of these or other documents relevant to the claims in the Navy contracts?

Mr. KAUFMAN. They made known none of this information to this subcommittee, Mr. Vice Chairman, and I'm not aware of whether they made them known to any other committee or to the Navy, but perhaps we could find out from the Navy today.

Senator PROXMIRE. Did either agency issue a report when they closed their investigations discussing this kind of information?

Mr. KAUFMAN. Both agencies spent many years investigating these cases. Each did shut their investigation, but with only a highly summary explanation of a sentence of a paragraph or two. There was no report indicating what information was obtained or that the kinds of problems identified in these documents did exist.

Senator PROXMIRE. And now you say the documents show Mr. Claytor, who was then Secretary of the Navy, and Mr. Hidalgo, who was then Assistant Secretary, collaborated with General Dynamics to jointly contrive an explanation for the settlement that would be approved by Congress, and that they short circuited the Navy's normal procedures for reviewing claims.

Now precisely what is wrong in this kind of collaboration with respect to the Navy's relations with the Congress and with respect to the obligations the Navy officials had to protect the Government's interest?

Mr. KAUFMAN. As I understand the Navy's obligation, it is to protect the Government's interest which is the interests of the taxpayer to get value for the money that's being spent. To do that, it seems to me that there must be an arm's-length relationship between the Navy and the contractors, particularly when there's a dispute over very large claims. There are procedures in the Navy that some Navy officials attempted to follow to judge the value of these claims and their worth on their merits. The evidence shows that the civilian officials did short circuit these efforts by Navy professionals to make a determination on the merits and made a determination on some other basis.

The basis that that determination was made on is unclear. We know what the contractor's theory was, that it was blaming the Navy for the problems. But we also know from these documents that the Navy was not the major responsibility nor the major cause of these problems. The merging of the two roles, therefore, between the Navy officials and the company officials does raise some very serious questions as to their appropriateness.

Senator PROXMIRE. Now that buzz was the last 5 minutes of the rollcall. I haven't missed a rollcall in 18 years, so I'm going to have to recess this, and I'll be back in about 5 minutes.

[A short recess was taken.]

Senator PROXMIRE. I apologize for taking so long. We had back-to-back votes, so I wasn't able to sprint back after the first vote.

Our witness is Mr. Eugene Paulisch, the Office of General Counsel. We are delighted to have you, Mr. Paulisch. Go right ahead, sir.

Mr. PAULISCH. Thank you, Mr. Vice Chairman. Let me introduce to the vice chairman, Comdr. Dan Allen, who is with the Naval Air Systems Command, and I have asked Commander Allen to sit here, in the event there are questions concerning contracting policies and that sort of thing.

Senator PROXMIRE. I understand, Commander Allen, you are the business manager of the F-14 "Tomcat" fighter and the Phoenix missile; is that right?

Commander ALLEN. Yes, Mr. Vice Chairman; that's correct.

Senator PROXMIRE. Very good to have you here.

Would you like to proceed with your statement, Mr. Paulisch?

Mr. PAULISCH. Is the vice chairman suggesting that I read the statement into the record, or is it always presented for the record?

Senator PROXMIRE. Why don't you summarize it, and then we'll go to questions.

STATEMENT OF EUGENE B. PAULISCH, ASSISTANT GENERAL COUNSEL, U.S. DEPARTMENT OF THE NAVY, ACCOMPANIED BY COMDR. DANIEL ALLEN, NAVAL AIR SYSTEMS COMMAND

Mr. PAULISCH. As preliminary matters in response to the subcommittee's letters, directing questions to myself and, earlier, Secretary Lehman, there were some questions raised about whether or not certain letters of Admiral Rickover back in the 1977-78 timeframe should be placed in the record, and what has happended with respect to the letter of January 12, 1978, which is marked "This enclosure contains information which may be proprietary." As soon as we got the subcommittee's inquiry, we caused inquiries to be initiated to the respective contractors involved in that data. They have not yet responded to that; however, if the subcommittee indicates they would like that later, we will make those responses available.

So as of now, we cannot make a representation that this is not proprietary data.

Senator PROXMIRE. You cannot make any representation to what effect?

Mr. PAULISCH. As of now, we cannot make any representation that it is not proprietary data. It appears to be proprietary data, and we have no other information on it.

As we have indicated in our prepared statement, it appears that the committee's primary interest, of course, is in the recent charges by Mr. Veliotis concerning——

Senator PROXMIRE. Let me interrupt to say, it's my understanding that we asked you to let us put into the record a letter on fraud

by Admiral Rickover—fraud at the shipyard—at General Dynamics' shipyard.

Mr. PAULISCH. Yes, sir.

Senator PROXMIRE. Is there no response on that?

Mr. PAULISCH. There's nothing classified in that letter and that can be put into the record.

Senator PROXMIRE. That can be put into the record. All right. Go ahead.

Mr. PAULISCH. It appears that the committee's interest here is obviously in recent allegations by Mr. Veliotis, late of General Dynamics, concerning the claims processed back in 1976, 1977. As Mr. Kaufman has reviewed, the Navy certainly was greatly involved in the evaluation of those claims at the time, and since the information concerning Mr. Veliotis' charges has been made available to the press which, incidentally, has been the Navy's only source—there is, as the committee knows, an ongoing investigation by the Department of Justice into one of those charges.

So in summary, concerning that specific area, I can add very little, simply because we have not been advised as to the scope of that investigation or the progress of it. We did review the debarment and suspension actions that have been taken as a result of the Federal indictments involving Frigitemp, which was a subcontractor to General Dynamics, and indicated in our prepared statement that two officials of General Dynamics Corp. have been debarred or suspended as a result of those activities.

There are a number of other individuals associated with the subcontractor, Frigitemp, who have also been suspended or debarred for various reasons. They have all been indicted for various criminal offenses and may or may not have been involved in the kickback scheme. But in any event, they have been debarred on other grounds.

As our prepared statement also indicates, the only investigation that the Navy Department has currently active—and it is extremely active, I'm told—is an investigation initiated in April 1984 into all of the contracts which Frigitemp Corp. or its affiliates had under any government contract at any locality. That obviously is an investigation of some scope, and is still going on, by the Navy Investigative Service.

Some of the other questions, obviously, have all been answered in the prepared statement.

[The prepared statement of Mr. Paulisch follows:]

PREPARED STATEMENT OF EUGENE B. PAULISCH

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to discuss the subject of Navy Shipbuilding and the General Dynamics Corporation.

I am Eugene B. Paulisch, employed by the Office of the General Counsel, Department of the Navy, since 1970. I am currently an Associate Chief Trial Attorney with the Litigation Office.

From 1970 to 1973, I was assigned to the Office of Counsel, Naval Supply Systems Command, where my primary activity was litigation before the Armed Services Board of Contract Appeals in various supply contract disputes. In 1973, I was assigned as co-counsel on a shipbuilding contract claim before the ASBCA, and until 1981 was occupied almost exclusively with shipbuilding contract claims. Since 1981, I have acted as an Associate Chief Trial Attorney, generally supervising a team of several attorneys engaged in various litigation before the ASBCA and federal courts.

Your request for our appearance at this hearing listed a number of questions. Answers to your questions follow.

Question #1

What is the Navy's policy concerning suspension and debarment of Navy contracts and how has this policy been carried out in the case

of the alleged wrongdoing by General Dynamics?

Answer

The policies governing suspensions and debarments of Navy contractors are contained in the Federal Acquisition Regulations, Subpart 9.4. It is Navy policy to consider suspension/debarment action against all individuals or companies indicted or convicted of fraudulent actions against the Government. Suspension and debarment action may also be taken prior to indictment if adequate evidence of wrongdoing establishes that this action is necessary to protect the government's interest.

On 27 February the Navy suspended two former officials of the General Dynamics Corp., Mr. P. Takis Veliotis and Mr. James H. Gilliland, based on grand jury indictments.

General Dynamics has not been suspended because the Navy has no evidence of wrongdoing on the part of the company other than the alleged wrongdoing of Messrs. Veliotis and Gilliland. These individuals are no longer with the company. Should such evidence come to light, the Navy will take appropriate action.

Question #2

What actions has the Navy taken to determine whether General Dynamics was paid kickbacks from suppliers other than Frigitemp, and whether officials other than those who were indicted were aware of the practice?

Answer

There is no ongoing Navy investigation of General Dynamics' subcontracting in general. Their procurement system is periodically reviewed and their proposals, including subcontract proposals are subject to audit. When any of these reviews and audits raise questions, or we receive a hot line complaint, the Navy is prepared to initiate an investigation and to support any Department of Justice investigation.

Question #3

What actions has the Navy taken to determine whether Frigitemp paid kickbacks to other Navy contractors?

Answer

In December 1983 the Department of the Defense Inspector General undertook to obtain records assembled by the United States Attorney and the trustee in bankruptcy in this matter and to provide these

records to the Navy Debarment Committee. A representative of the office has also advised us that they have conducted interviews and are pursuing leads.

In April 1984, the Naval Investigative Service was directed by the Secretary of the Navy and the Vice Chief of Naval Operations to initiate investigation of Frigitemp and related companies and their relationship with the Navy, directly or as subcontractors. NIS was directed to determine the extent of contracting activity and to assess the probability of kickbacks and/or other pay-offs to prime contractors and/or government employees. The investigation continues.

Question #4

What actions has the Navy taken to recover monies used for the payment of kickbacks?

Answer

In February 1984 the Justice Department filed a civil suit in the United States District Court for the District of Massachusetts against two officers of Frigitemp and one officer of General Dynamics (Mr. George G. Davis, Mr. Gerald E. Lee, and Mr. James H. Gilliland) under the Anti-Kickback Act and the False Claims Act

seeking recovery of monies paid to them under a kickback scheme involving the award of subcontracts under liquified natural gas (LNG) tanker and nuclear submarine construction contracts. A decision has not been rendered in that case.

The Navy and DCAA have conducted a review of subcontracts awarded to Frigitemp, and its successor, IDT Corporation, to determine if their prices were inflated by kickback payments. We found no probitive evidence of such payments inflating the prices of Navy subcontracts. The investigation into those subcontracts continues.

Question #5

What actions has the Navy taken to determine the accuracy of the allegations that the claims filed by General Dynamics in 1976 were fake, and to protect the Navy's interests in the event that the allegations turn out to be true?

Answer

The Navy has not been apprised of the details, if any, of the recent allegations attributed to Mr. Veliotis that the claims filed by General Dynamics in 1976 were false. DOJ has advised us that the matter is under their cognizance.

Question #6

What is the Navy's response to the findings in the Justice Department's report "Review of Navy Claims Investigations," which are critical of Navy policies, procedures and actions?

Answer

The Navy does not concur with the findings in the report, "Review of Navy Claims Investigation."

Our principal concern with the draft report is that both Navy and Justice Department officials and Navy contractors could interpret it as representing Criminal Division policy. Should that be the case, its conclusions that the Department of Justice will not prosecute grossly inflated shipbuilding claims in the absence of "smoking gun" evidence could result in a resurgence of inflated omnibus claims which we saw in the 1970's, since the threat of criminal prosecution would be substantially diminished, if not eliminated. Further, to imply that the Navy should not refer matters to the Justice Department without this "smoking gun" evidence ignores the fact that we have limited criminal investigative authority and resources and, accordingly, that we must rely on the Department of Justice to investigate and determine whether a crime has been committed. Also, the implication that the Navy expects its contractors to submit

inflated claims to facilitate negotiations, and the implication that the Navy undermined the Department of Justice's ability to prosecute shipbuilders by entering into settlements simply do not square with the facts. For instance, the Department of Justice advised both the Navy and the Congress that it had no objection to the P.L. 85-804 settlement between the Navy and GD/Electric Boat.

Question #7

What is the Navy's policy concerning Navy officials who go to work for contractors after participating in decisions about contracts awarded to those contractors?

Answer

The Navy's policy concerning Navy officials who go to work for contractors is to enforce the law restricting representational activity by all former employees, military or civilian, and the laws restricting selling by retired regular officers.

Section 207 of Title 18 of the United States Code, as amended by the Ethics in Government Act of 1978, sets forth the following restrictions on representational activity by former employees:

a. A former employee is permanently barred from acting as agent

or attorney for anyone other than the United States in connection with any particular matter such as a contract involving a specific party or parties in which the United States is interested and in which the individual participated personnally or substantially in his or her governmental capacity.

b. A former employee is barred for two years after leaving government from representation activities involving particular matters that were actually pending under his or her official responsibility during the last year of Government service regardless of whether there was personal or substantial involvement.

c. A former "Senior employee" such as one in a position at Level I through V of the Executive Schedule or whose position involves "significant decision-making or supervisory responsibility" is barred for two years after leaving government from assisting in the representation of another person by "personal presence" at an "appearance" before the United States in connection with any particular matter in which the former senior employee could not act as the person's actual representative because of his or her personal and substantial participation in the matter while in government service.

d. A former "Senior employee" is also barred for a one year period after leaving government from representing anyone vis-a-vis

his former agency whether by formal or informal appearance, or by written or oral communication intended to influence the former employing agency.

Section 281 of Title 18 of the United States Code permanently bars a retired regular officer from representing any person in the sale of anything to the Government through the military department in whose service he or she holds retired status.

Section 801(b) of Title 37 bans a retired regular officer for a period of three years after retirement from selling, or contracting or negotiating to sell supplies or war materials to any agency of the Department of Defense, the Coast Guard, NASA, or the Public Health Service.

Annually during their tenure and also immediately prior to leaving the Navy employment, employees are briefed regarding these restrictions. The Navy's Standards of Conduct regulation prohibits employees from dealing with former employees who are in violation of these restrictions. When a violation of these restrictions is revealed, the matter is referred to the Department of Justice for criminal prosecution.

The foregoing laws restrict representational and selling activity by former employees. There is no law or Department of Defense or Navy regulation which prohibits an official going to work for a contractor after participating in decisions about contracts awarded to that contractor.

Mr. Chairman, this concludes my prepared statement. I will be pleased to answer any questions that you or the subcommittee may have.

Senator PROXMIRE. Why don't we go ahead and ask questions and we can get to the heart of this. I understand you worked on a Litton claim which was investigated by Justice for fraud. Was that claim grossly inflated? Was there evidence that it was fraudulent?

Mr. PAULISCH. You're talking now about the one that is currently awaiting trial in Mississippi?

Senator PROXMIRE. That's right. Litton was indicted.

Mr. PAULISCH. Yes. Yes; I worked on the ASBCA aspect of that litigation and, of course, we argued that the claim was excessive in a number of areas. It was a rather difficult situation, because we had a parallel investigation going by the Justice Department at the same time and then, of course, once the indictment was returned in—I believe it was April 1977—we, of course, were out of the investigation and the Justice Department took it over completely, so we are really not aware of the specifics of the evidence that may be presented in this case.

Senator PROXMIRE. Well, in your judgment—you worked on the claim—was there evidence that it was fraudulent?

Mr. PAULISCH. No; I believe we argued that there were many areas that appeared to be inflated. The explanation is, of course, that we did not have available to us evidence that apparently the Justice Department later uncovered.

Senator PROXMIRE. Would you say, as a general proposition, Mr. Paulisch, that the contractors should not exaggerate claims, and to do so is wrong, if not dishonest?

Mr. PAULISCH. Well, obviously, anyone who makes a claim tends to puff their claim to some extent, and my own feeling is, if it's a judgmental or estimating puffing, that that can be met by other evidence of whatever the actual facts were, and I believe that while one might make an argument that this is morally incorrect, that it's not a violation of any law or statute.

Senator PROXMIRE. Well, why isn't it wrong? It just seems to me outrageous. I can't understand why a firm that has a claim doesn't state what the claim is as exactly as it can. Fully, of course. But I don't see any reason why it should puff it or—as you say—or exaggerate it.

Mr. PAULISCH. Well, I obviously think that would be——

Senator PROXMIRE. I'm not talking about it being ideal. It would seem to me any honest businessman would do that. Don't they have to certify that it's correct?

It seems to me that it's a very bad situation, if the Navy is assuming that these people make claims that are exaggerated and just assumes that's a way of life. It would seem to me once you accept that kind of a situation as ordinary, that it's going to cost the taxpayer a tremendous amount of money.

Mr. PAULISCH. Well, Mr. Vice Chairman, I don't think the Navy——

Senator PROXMIRE. I'm not saying people shouldn't state what they truly believe is the case. We often, in business, get people who say that they're owed a great deal of money and others who dispute it. But it would seem to me to accept the notion that they would come in and deliberately make a claim that is not wholly justified, it seems to me it's just plain dishonest.

Mr. PAULISCH. Well, unless there is some specific misrepresentation, unless there's some specific falsity or false representation with the intention to defraud the Government, you simply have a difference of opinion as to what the costs are as the result of certain events.

Senator PROXMIRE. I understand you worked on the investigation of the Newport News claim.

Mr. PAULISCH. Yes, I did.

Senator PROXMIRE. Was it grossly exaggerated, and was there any emphasis of fraud in that claim?

Mr. PAULISCH. The situation with that is—I don't know whether the committee realizes that I was a special U.S. attorney in that investigation, and I, therefore, have access or had access to all of the grand jury proceedings that took place. So it appears that we have a situation here where I would be precluded from answering specific questions with respect to the evidence to the charges in that case.

Senator PROXMIRE. Now you have heard the documents summarized by the staff. Does it violate any Navy regulation, if a contractor buys into a contract by submitting a bid below what he knows the cost will be?

Mr. PAULISCH. I know of no regulation that it violates; however, it is possible that if a contracting officer or an agency recognizes that fact, it may question that proposal and could conceivably, if a satisfactory response is not forthcoming, decline to award on responsibility grounds.

Senator PROXMIRE. Well, that seems to me to be an enormously expensive loophole, if there's no regulation that would make that wrong or improper. It's hard for me to understand what a Navy procurement official—how he protects the Government's interest under these circumstances.

Mr. PAULISCH. It is very difficult, because what the contracting official must do is to go back to the contractor and seek justification of the price.

Senator PROXMIRE. Well, why wouldn't it be helpful to the Navy under these circumstances and good for the interests of the taxpayer, if we provided that a buy-in was illegal, provides regulations that a deliberate buy-in is wrong? Wouldn't that be a basis for holding down the costs that we have been talking about with all these colossal differences between what these firms say they can produce—a ship or some other weapons system for?

Mr. PAULISCH. Well, Mr. Vice Chairman, I'm sure you're more aware than I that one of the primary tools in holding down the cost of Government procurement is open competition, so we have two interests opposed to each other here. On the one hand, we're saying to contractors, bid your best in open competition. And on the other hand, we're saying, "Perhaps if we have evidence of underbidding, that we won't award the bid."

Senator PROXMIRE. Mr. Paulisch, I can't think of any more destructive policy with respect to competition than a buy-in. A buy-in, if you have two or three different firms bidding and one bids a lower price, knowing perfectly well that they are going to have to make a claim later on, that destroys the whole purpose of the competition.

Mr. PAULISCH. It may well, sir.

Senator PROXMIRE. Of course it does, every time. After all, in a case we had this morning where you have a project that was supposed to cost $1.2 billion, including inflation, and it cost $3 billion, it completely nullifies the effect of competition. A bid means nothing at all. It means that whoever is the biggest liar is going to get the contract, doesn't it?

Mr. PAULISCH. That may be, sir; yes, sir.

Senator PROXMIRE. That's why it would seem to me we should look long and hard at the wisdom of providing for regulations that prohibit deliberate buy-ins, and I think you can document this statistically and in other ways to determine whether or not there has been a buy-in and then act to disqualify a firm that does that from further business. If you had some kind of a penalty of this kind, it would be effective.

Mr. PAULISCH. Well, that's not my function, either regulation or legislation, along those lines.

Senator PROXMIRE. Would it have made any difference to the Navy, if it knew that General Dynamics had bought into the 688 contract?

Mr. PAULISCH. Mr. Vice Chairman, I really don't think I can answer that. There was extensive evaluation of those proposals done at the time, and I, of course, was not involved in them.

Senator PROXMIRE. Why wouldn't it make a difference to the Navy if they knew the contractor on one of the most important contracts has, had deliberately falsified, lied, however you want to put it, the price for which they could deliver the submarine?

Mr. PAULISCH. I don't know whether it did, in fact, or not. It may have caused substantial concern at the time, but I'm really not aware of what occurred at that time.

Senator PROXMIRE. Are there regulations which require shipbuilders to inform the Navy about conditions in the shipyard, and what can the Navy do if it learns important information about contract's performance has been withheld, where misleading information has been provided?

Mr. PAULISCH. All of these large shipbuilding contracts have very specific reporting requirements—data reporting requirements—so that the Navy can track the progress, the productivity, the cost incurred, and so on, on a month-to-month basis. Obviously, if there are written reports that are called for that are falsified, in my judgment, that would very likely to be a criminal violation.

Senator PROXMIRE. Now in this case, with respect to General Dynamics, you had a situation which was as appalling as any I have heard described, described by the chairman of the board of General Dynamics, Mr. Lewis, who said that they had twice as many people brought into the shipyard with no increase in production, and a situation in a building that was in the most deplorable shape of any building he had ever seen.

Was that information made available to the Navy at the time?

Mr. PAULISCH. I don't know, Mr. Vice Chairman. I just am not able to speak to that. It would have occurred in 1974, 1975, 1976.

Senator PROXMIRE. Don't you feel the Navy should know about that, when you have that kind of absolutely appalling situation for a contractor?

Mr. PAULISCH. I think they should. I think the reporting requirements under the contract should be designed so that information is furnished.

Senator PROXMIRE. In this case, do you know whether or not those reporting requirements were met?

Mr. PAULISCH. So far as I know. I have no specific information.

Senator PROXMIRE. Why wasn't the Navy fully aware of what was going on?

Mr. PAULISCH. I'm not sure that the Navy was not, Mr. Vice Chairman.

Senator PROXMIRE. Why didn't they do something about it? As Mr. Kaufman was able to show in documented statements from Mr. Lewis and others, that had been going on for a long time, and the Navy took no corrective action—no effective correction or action.

Mr. PAULISCH. I'm not sure, as we indicated earlier—there is no evidence of intentional misrepresentation or falsification of these reports.

Senator PROXMIRE. Mr. Paulisch, it really is astonishing for you to say the Navy did not know what was going on. If the Navy knew what was going on, it seems to me it's coconspirator in the cost overruns and all the rest. The Navy is a party to this colossal increase from $1.2 billion to $3 billion in the cost of this program, from 4 million man-hours to 7 million.

Mr. PAULISCH. Well——

Senator PROXMIRE. If the Navy knew what was going on, it seems to me they certainly are not protecting the interests of the American taxpayer.

Mr. PAULISCH. My response to that is that it appears the Navy was a victim rather than a coconspirator in that situation.

Senator PROXMIRE. What if a contractor blames the Navy for cost overruns, which is what the claim is, if they're responsible? Suppose the claims may be for cost overruns and seeks reimbursement through a claim but privately admits that mismanagement and inefficiency are the problem? Does that suggest the claim may be fraudulent and would that be a sufficient reason to request a Justice Department investigation?

Mr. PAULISCH. I think if that were known at the time, it would certainly suggest the claim was grossly inflated, perhaps, but whether or not there are criminal violations involved in the submission of that claim is really another topic and another subject.

Senator PROXMIRE. Well, would it make any difference to the Navy if the claim was proven to have been false, or if evidence comes to light that it was light, then what actions might be taken?

Mr. PAULISCH. Obviously, the first action that's taken is to advise the Department of Justice of this situation, furnish them with all the information and request a criminal investigation.

Mr. KAUFMAN. Mr. Paulisch, it's unclear what you're saying as to the distinction you are drawing between a claim that may be grossly exaggerated and a claim that may be fraudulent. You're saying, if there's evidence of fraud, it should be referred to the Justice Department for investigation, but simply because it's grossly exaggerated does not require you to refer it to the Justice Department; is that correct?

Mr. PAULISCH. I think you will find in the claims that we're generally discussing here—these claims in the late 1970's—that the gross inflation of the claims were one of the indicia considered by the Navy, and in fact, all of those claims were referred to the Justice Department for investigation of that very fact, that the gross inflation may be evidence that there may be some fraud—one of the evidences—and therefore the referral of those claims was made to the Justice Department.

Mr. KAUFMAN. Then, is it Navy policy that if a claim is received that is grossly exaggerated, it will be considered for referral to the Justice Department?

Mr. PAULISCH. I don't know that there is any specific policy. Certainly, if a claim appears to be so grossly inflated that there could be a suspicion that it is, in fact, fraudulent, then it certainly would be gone over in some detail, as these claims were, and ultimately referred to the Justice Department for investigation.

Senator PROXMIRE. Now I described in my opening statement the situation with respect to Secretary Claytor and Assistant Secretary Hidalgo working in conjunction with General Dynamics management to work out an explanation for a settlement, after the Navy itself—the Manganaro board—had come in with a far smaller settlement.

Do you see anything wrong with Navy officials jointly working with a contractor on an explanation for a claims settlement or a bailout under the financial relief laws to be approved by Congress, or are such actions considered appropriate as a part of the game the Navy and its contractors play with the Congress? What they did in that case, as you know, was to work out an agreement they thought Congress would be most likely to sit still for. Should Navy officials do that?

Mr. PAULISCH. I think what I gather the vice chairman is basing the question on is the prior remarks of Mr. Kaufman suggesting that there was some collaboration between the then Assistant Secretary of the Navy and the contractor. If, in fact, that is the case, then it should be revealed by the ongoing investigation arising out of this whole series of allegations that Mr. Veliotis has made. With respect to what is the Navy policy in the handling of 85-804 relief, I think it's clear from the statutory authority and the regulations that the Secretary or the involved presiding official simply has to consider a whole other range of interests outside, extra contractually, and make his decision.

Whether or not he, in the process of that, discusses it or negotiates with the contractor I think would probably be perfectly permissible to obtain the objectives that the official requires.

Senator PROXMIRE. Wouldn't it have been more proper for the Navy to have first decided what the grounds were for giving General Dynamics a bailout and explaining that to Congress rather than first deciding what kind of explanation Congress would buy and tailoring the explanation to that idea?

Mr. PAULISCH. I think that question answers itself. I think, obviously, if that situation arose, it would be preferable to——

Senator PROXMIRE. I beg your pardon, sir.

Mr. PAULISCH [continuing]. Simply state the reasons existing for the proposed 85-804 relief.

Senator PROXMIRE. Are you aware that Mr. Hidalgo, who helped General Dynamics put together the bailout of the 688 submarine contracts was an Assistant Secretary of Navy, was given a legal retainer by General Dynamics soon after he left the Navy; that he was initially, and that at least until recently he was still on legal retainer from General Dynamics?

Is there anything wrong with that from the Navy's standpoint?

Mr. PAULISCH. As we indicated in our answer to one of the committee's questions with respect to Navy officials going to work for contractors, unless the activity that's described is within the prohibited activities of the various statutes and regulations. But as we pointed out in our prepared statement, there is no law or regulation prohibiting an official from going to work as an employee of the contractor.

Senator PROXMIRE. Shouldn't there be? Isn't that a revolving door of the worst kind? Here's a man who represents the Government—the taxpayer—and he's Assistant Secretary, and then he leaves the Navy and is paid a retainer by the very firm he was dealing with. Isn't that a pretty evident, obvious, blatant conflict of interest?

Mr. PAULISCH. Frankly, Mr. Vice Chairman, I don't know. I don't know what the terms of the employment were or what his duties were supposed to be.

Senator PROXMIRE. Under any circumstances? You're the legal counsel. If you don't know it, I don't know who would.

Mr. PAULISCH. Well, if we assume that he was paid to do whatever—some studies, consult concerning the market or whatever, as long as he did not represent the contractor before the Navy.

Senator PROXMIRE. Have you reviewed this specific case?

Mr. PAULISCH. No, I have not.

Senator PROXMIRE. You haven't. Why not? Do you have a board of ethics in the——

Mr. PAULISCH. Yes, we have.

Senator PROXMIRE. Why wouldn't the board of ethics get into something like this?

Mr. PAULISCH. I'm not sure they have not. I just have no information on it.

Senator PROXMIRE. You don't know whether they have or not. Are you aware that another former high official, George Sawyer, who was an Assistant Secretary, went to work for General Dynamics after taking part in Navy decisions awarding approximately 5 billion dollars' worth of contracts to General Dynamics?

Mr. PAULISCH. Yes, I am.

Senator PROXMIRE. Is there anything wrong or troublesome about that from a Navy standpoint?

Mr. PAULISCH. There does not appear to be any conflict of interest with respect to decisions made while Mr. Sawyer was Assistant Secretary.

Senator PROXMIRE. Well, look at it from the standpoint of anybody in the public who has the slightest interest in a strong military defense and holding down spending at the same time. Here's a man, Assistant Secretary of the Navy. He took part in Navy decisions awarding about 5 billion dollars' worth of contracts to General Dynamics, and then he goes to work for General Dynamics.

Mr. PAULISCH. I think if he had no interest in those actions at the time and there was no preferential treatment of those contractors, that there was an arm's length dealing within his responsibility, then I don't feel——

Senator PROXMIRE. Was there a report of any investigation of this?

Mr. PAULISCH. Yes, as I have indicated.

Senator PROXMIRE. Will you give us a copy of that?

Mr. PAULISCH. I am sure that can be made available by the Inspector General of the Navy.

Senator PROXMIRE. You say, in your estimate, there's no law or regulation prohibiting an official from going to work for a contractor after taking part in decisions about contracts awarded to that contractor.

Isn't that a loophole that should be closed, and shouldn't there be a law or regulation to discourage Government officials from building their own nest by funneling contracts through a future employer?

Mr. PAULISCH. May I ask if you're asking my personal opinion with respect to that, or whether I'm involved in any policy decisions with respect to it?

Senator PROXMIRE. I want both. I want your personal opinion and I want your professional opinion. Maybe you ought to give the personal opinion first, so you will be freer.

Mr. PAULISCH. My personal opinion is that we have heard the expression "revolving door" for many, many years, and it's obviously been a problem at various times. My personal opinion is that any further restriction on employment activity of the people in Government service may have the effect of closing off the opportunities in the Government to have some of these people available to work for the Government. We obviously have regulations concerning uniformed military, retired military, people who have had——

Senator PROXMIRE. Do you have such a dearth of talent in this country, with our remarkable management ability we take such pride in, with our tremendous schools of business administration, and so forth, training people who are competent and expert, that the only way we can get talent is to have a revolving door, in which people can come and work for the Government for a while and then get into business and take advantage of it or be in a position where they could?

Mr. PAULISCH. I think for most Government positions, we would be able to fill those. However, I think what we're really talking about here is the career temporary type or executive level appointments, and those necessarily change frequently.

Senator PROXMIRE. So you don't think that loophole should be closed? Maybe you don't think it's a loophole.

Mr. PAULISCH. In my personal opinion, it would cause a great deal of difficulty.

Senator PROXMIRE. Now give me the official position of the Navy on this.

Mr. PAULISCH. I'm not aware of any official position at this time, other than what is reflected in the statutes and regulations.

Senator PROXMIRE. You said General Dynamics was not suspended from getting new Navy contracts after Veliotis and Gilliland

were indicted, because the Navy has no evidence of wrongdoing by the company. Shouldn't the burden be on the company to show that no one else knew about the kickbacks once the two high officials were indicted? And doesn't it seem plausible that others would have known about a kickback scheme as large as this one involving literally millions and millions of dollars? These people would be isolated and no one else would know about it?

Mr. PAULISCH. I'm sorry. I lost the question.

Senator PROXMIRE. Shouldn't the burden be on the company to show that no one else knew about the kickbacks once the two high officials were indicted?

Mr. PAULISCH. Well, as we know, there is pending currently an investigation by the Justice Department.

Senator PROXMIRE. Well, the pending investigation is an investigation of Veliotis and Gilliland; right?

Mr. PAULISCH. I was under the impression it was with respect to Veliotis, charges that there was misconduct by other General Dynamics officials——

Senator PROXMIRE. Well, why under these circumstances shouldn't they be suspended from future contracts?

Mr. PAULISCH. Well, as I think our prepared statement indicated, we simply have not or do not have available to us or have not found within the Navy any probative evidence that there were any other management officials of General Dynamics involved in these activities.

Senator PROXMIRE. Now the National Broadcasting Co.—NBC—recently had a two-part series showing that Litton and the Lockheed officials got kickbacks from the same company which bribed General Dynamics. Has the Navy suspended either of these two companies? If not, why not?

Mr. PAULISCH. Yes, we have, both of those.

Senator PROXMIRE. You have suspended them, is that correct?

Mr. PAULISCH. You're referring to Frigitemp and IDT?

Senator PROXMIRE. I'm talking about Litton and Lockheed.

Mr. PAULISCH. Oh. There's been no suspension.

Senator PROXMIRE. You suspended the two little contractors. I'm talking about the big boys, Litton and Lockheed. They have not been suspended?

Mr. PAULISCH. No. So far there are investigations pending with respect to those.

Senator PROXMIRE. Why haven't the big ones been suspended?

Mr. PAULISCH. Well, again we simply do not have available evidence that the corporate management was involved in any wrongdoing that took place.

Senator PROXMIRE. But the evidence that you had was sufficient to suspend the small companies.

Mr. PAULISCH. Well——

Senator PROXMIRE. What was the difference?

Mr. PAULISCH. Well, there was direct evidence in those cases of specific kickbacks.

Senator PROXMIRE. There's evidence here that Lockheed officials and Litton officials got kickbacks. They admitted it. No question about it.

Mr. PAULISCH. The only response I can make is that investigation is ongoing by the Naval Investigative Service and I think also by the Department of Defense IG.

Senator PROXMIRE. Has the Navy ever suspended a major or large contractor ever?

Mr. PAULISCH. I don't recall any; no.

Senator PROXMIRE. Aren't you applying a double standard by suspending small firms when one of their officials is indicted, debarring them from contracts when there's a conviction, but not suspending or debarring any large firms?

Mr. PAULISCH. I don't think there's a double standard, Mr. Vice Chairman. I think what occurs——

Senator PROXMIRE. Just a coincidence?

Mr. PAULISCH. What occurs in any large corporate entity or conglomerate entity, people who are accused or found guilty of wrongdoing can be easily insulated from the rest of the organization. In other words, simply separated and dispatched elsewhere, and I think most of the large—very large industry is very, very concerned about that kind of activity taking place within their organization and do take affirmative steps to remedy that.

In the cases of small business where you have an individual who is, in fact, the business, there really is no choice but to debar or suspend, whatever it is.

Senator PROXMIRE. In the Litton case, the Lockheed case, the General Dynamics case, for the record, will you give us the specific steps which were taken to prevent this kind of action in the future by these big firms which had officials who were indicted for kickbacks? I understood you to respond to me that in the case of the big firms they have taken steps to prevent this from happening in the future; is that right? But the small firms have not done so?

Mr. PAULISCH. If the situation arises. But we have not proposed suspension or debarment with respect to any of those firms.

Senator PROXMIRE. Yes. I understood you to respond to me, one of the reasons why you didn't debar the big firms was because they had taken action—did I misunderstand you—to prevent this from happening in the future?

Mr. PAULISCH. I think I was responding to the prior question which is that there's a double standard.

Senator PROXMIRE. So you don't know of any action taken to prevent this from happening in the future?

Mr. PAULISCH. There's been no specific activity with respect to those contractors.

Senator PROXMIRE. In the recent Sperry case where the Government got a conviction for mischarging the Navy, there was no suspension or debarment. Why not, and isn't that an example of the Navy's double standard—the Sperry case?

Mr. PAULISCH. I'm sorry, Mr. Vice Chairman. I'm not at all familiar with the Sperry case. I just don't have any information on it.

Senator PROXMIRE. Are you familiar with the recent report on suspension and debarment of the Inspector General of the Defense Department and the fact that it severely criticizes the Navy for being lax in this area and not taking timely and adequate action and failing to coordinate actions with contracting officers and with

the Justice Department? And would you respond briefly to that report?

Mr. PAULISCH. Yes. I have seen that report, and as the Under Secretary of the Navy Mr. Goodrich responded to, and as he points out, there are some shortcomings with respect especially to turnaround time, to some extent caused by the complexity of the procedures involved and the necessity to make sure that perhaps innocent contractors are protected from summary kinds of suspension and indicating that the various problems that the IG has suggested can be and would be dealt with by additional staffing—additional requirements to respond quickly, and so on.

Senator PROXMIRE. How do you explain the laxness the Inspector found in the Navy?

Mr. PAULISCH. As I recall the report, the primary problem seemed to be the time of response and the time of initiating action.

Senator PROXMIRE. That's certainly one indication of laxity.

Mr. PAULISCH. Yes. We have kind of an internal problem with that because the procedure requires that the action be initiated at the contracting officer level. In other words, some investigation be made, or if there's some allegation made that the contracting officer then submit a full report of whatever the activity or suspicion is. And that, in turn, goes through his chain of command and finally to the Chief of Naval Materiel, who is that debarring official for the Navy.

So that procedure takes, depending on whether additional information has to be solicited or acquired from wherever source—it takes 30, 60, 90 days. The debarring official has such a volume of these actions at the present time that obviously the Chief of Naval Materiel cannot possibly look at all those. He therefore has delegated that function to a debarment committee, and it takes some time to process the matter through the debarring committee. So the whole procedure necessarily takes 90, 100, 120 days.

Senator PROXMIRE. Let me read what the Office of the Inspector General of the Department of Defense, a May 1984 report, page 46, said:

"There is little evidence that the Navy is taking timely, coordinated and adequate actions in the majority of cases reviewed."

Most of the time they're just not doing the job, according to the Inspector General.

Mr. PAULISCH. Well, at least at the present time, I would feel that I should take some issue with that. The debarment committee is just simply swamped with actions at the present time and acts as expeditiously as they possibly can.

Senator PROXMIRE. So you don't have enough resources; is that it?

Mr. PAULISCH. That, in fact, has been a problem. In fact, the Chief of Naval Materiel, just in the past weeks, has undertaken to acquire resources from other available resources within the Department, in order to——

Senator PROXMIRE. Let me ask you this. Have you replied to this report of the Inspector General?

Mr. PAULISCH. I beg your pardon.

Senator PROXMIRE. Have you replied to the report of the Inspector General that I cited?

Mr. PAULISCH. As I indicated, the Under Secretary of the Navy, Mr. Goodrich, did reply.

Senator PROXMIRE. Will you send us a copy of his reply?

Mr. PAULISCH. Yes, I will.

Senator PROXMIRE. Thank you.

You say someone in the Navy is conducting interviews and pursuing these to determine whether Frigitemp, which made kickbacks to General Dynamics, paid them to other contracts. Who is running that inquiry and how do you explain the fact that NBC found more cases of Frigitemp kickbacks, but the Navy hasn't found any?

Mr. PAULISCH. The Naval Investigative Service is charged with that. In April 1984, the Secretary of the Navy directed the Naval Investigative Service to do a full and complete investigation of all Frigitemp and related company contracting, and that is still under way. So whether or not they will find more or less, I have no knowledge at this time.

Senator PROXMIRE. Now you told us there is no ongoing investigation of General Dynamics' subcontracting, despite the fact that there have been several convictions in the Frigitemp case. Why not?

Mr. PAULISCH. Other than Frigitemp and related?

Senator PROXMIRE. Why isn't there an ongoing investigation of the subcontract?

Mr. PAULISCH. We simply have no—the Navy had no specific knowledge of any irregularities in our subcontracts, that is, with respect to submarine contracts. The total amount of the Frigitemp contracts with respect to our—that is, submarine contracts—was a very small percentage, of course, of the total amount of subcontracts with Frigitemp and General Dynamics.

Senator PROXMIRE. Now, Mr. Paulisch, I have some questions on the Justice Department and your relations to the Justice Department. They're going to be testifying tomorrow. So I'd like to get this on the record now.

In response to my question about whether the Navy has done anything about the Veliotis allegations that General Dynamics claims were falsified, you said the Justice Department informed you that the allegations are under its recognizance. Has the Justice Department given you any information or kept you informed about what it is doing, and has the Navy been briefed by Justice, or did you ask Justice for a briefing or for any information?

Mr. PAULISCH. Mr. Turnquist, who is Associate General Counsel for Litigation, has inquired of the Justice Department several times over the last couple of months. They have simply informed him that the investigation is in progress, and they will be in touch. So the answer is, no, we have no specific information as to what is being disclosed.

Senator PROXMIRE. Would you characterize the situation, or would you say the Navy has had a lot of cooperation from the Justice Department in this matter?

Mr. PAULISCH. On the Veliotis matter?

Senator PROXMIRE. Yes, sir.

Mr. PAULISCH. Well, the Veliotis matter, of course, came to the attention of the Department of Justice independently of the Navy,

so they have not requested any particular cooperation, although I'm sure we have indicated——

Senator PROXMIRE. I'm talking about the Veliotis allegations that General Dynamics claims were falsified. Have you had a lot of cooperation from Justice on that?

Mr. PAULISCH. They have not requested any resources from us.

Senator PROXMIRE. Have you asked them for information?

Mr. PAULISCH. Yes. As I have indicated, we have made inquiries and just simply been notified——

Senator PROXMIRE. Have they provided you with the information you sought?

Mr. PAULISCH. No. Just indicated that the investigation was still going on.

Senator PROXMIRE. In other words, they have been uncooperative?

Mr. PAULISCH. Well, I don't know whether it's uncooperative or whether they wished to conduct their investigation without disclosing whatever it is they're doing.

Senator PROXMIRE. Well, are they stonewalling the Navy?

Mr. PAULISCH. I don't know.

Senator PROXMIRE. Just keeping you in the dark, however, you know that?

Mr. PAULISCH. My guess would be they have an investigation going, which is not uncommon, and they don't wish to discuss it until they get to the point where they feel they have resolved it.

Senator PROXMIRE. Does the Navy care that it's being kept in the dark?

Mr. PAULISCH. I'm sorry.

Senator PROXMIRE. Do you care that you're being kept in the dark?

Mr. PAULISCH. Obviously, we have made inquiry, but since it is the exclusive province of the Justice Department to do these investigations, we assume that they are doing whatever it is they are supposed to do.

Senator PROXMIRE. But isn't it your responsibility to know what your contractors are doing and whether or not your contractors are engaging in criminal activities?

Mr. PAULISCH. I think it is; yes, sir.

Senator PROXMIRE. Well, why shouldn't you be kept informed then? You're trusted with the most highly classified information as top secret, and then some. Why couldn't you be trusted with information in this regard?

Mr. PAULISCH. Well, the comparison is not quite on an even basis, because the disclosure of—obviously, we have no problem protecting and talking steps to protect classified information, but the disclosure of investigative information in the midst of an investigation may severely prejudice that investigation, and we simply have to rely on the judgment of the Justice Department as to what should be made available.

Obviously, if we use that in a suspension procedure, it would be then available to the public.

Senator PROXMIRE. Now, you express serious disagreement with the Justice Department's report entitled "Review of Navy Claims Investigations."

Describe the report briefly and tell us how the Navy became aware of it.

Mr. PAULISCH. Well, the report was, I believe, transmitted in mid-1983 and was the subject of a great deal of study within, especially, the Office of General Counsel of the Navy and certain of the commands, and there were a number of conversations which I wasn't a party to between Navy officials and Justice Department officials concerning the report. One of the things we wanted to establish was whether or not it was an official Justice Department report and our concerns, as we noted them in our answer to the committee's question, points up the resolution, perhaps, of that question. We point out that we now understand that it is not Justice Department official policy but simply a draft of a staff report on a study that was made. So we wanted to be sure that that was clarified, because in our view, the report seems to indicate that unless you have the falsified invoice in hand, it's going to be very difficult to get an investigation. I don't think that's the Department of Justice's position, and certainly, it's not our understanding.

Senator PROXMIRE. Mr. Paulisch, I just have a few more questions.

I'm going to ask you to be very brief, because the hour is late. You have been an extremely patient and cooperative witness, and I appreciate that.

Did the Navy assume, when it was sent a copy of the report from Justice, that it represented Criminal Division policy of the Division?

Mr. PAULISCH. I'm sorry; I didn't quite understand.

Senator PROXMIRE. Did the Navy assume, when it was sent a copy of the report from Justice, that it represented Criminal Division policy?

Mr. PAULISCH. I think I touched on that. There was concern and some questions in our minds as to whether or not this was a draft report or whether or not it was Justice policy, and there has been communication between the various officials since that, and finally, just a few months ago, I think it was August 1984. I'm sorry. That date is incorrect. There was a written response in the form of a letter from the General Counsel to the Justice Department, which the answer, in fact, is the letter—the answer to the question in the record.

Senator PROXMIRE. Why does the Navy disagree with the report?

Mr. PAULISCH. Well, because, we mentioned earlier where we have a situation where we have perhaps a grossly inflated claim which may cause some concern that the claim is false or that there may be something fraudulent about the claim.

In order to establish that, it requires a level of investigation beyond what a Navy claim analysis can do. So we did not want to be discouraged nor did we want the Justice Department to be discouraged, that unless we came up with, as I mentioned earlier, the falsified invoice or the forged document, that we would not have a suitable situation for referral to the Justice Department for an investigation, because after all, the ultimate proof of criminal intent and the proof of—or perhaps conspiracy, which may be one of the

areas of investigation—depends on investigation that only the Justice Department with their resources can do.

Senator PROXMIRE. Have you communicated your disagreement of the report to Justice, and have you received any reaction from them?

Mr. PAULISCH. As I say, the answer to the question is, in fact, a General Counsel letter to Justice. So that has been communicated, and there are now ongoing——

Senator PROXMIRE. How did Justice react to that?

Mr. PAULISCH. Simply in the form of communications back and forth with the Office of the General Counsel. And I believe that there are scheduled at sometime to be some meetings discussing the whole thing.

Senator PROXMIRE. Well, thank you, Mr. Paulisch.

Let me just make a closing statement.

With all due respect to the Navy witness this morning, I believe the testimony demonstrates that the Navy has been and still seems to be, at best, a passive actor in Navy contracting. The problem in the past has been the Navy had a permissive attitude toward contract abuses. If that attitude still exists, heaven help the taxpayer! We have found gross loopholes, and I fear if we keep searching, we will find loopholes by the gross.

To its credit, the Navy disagrees with some aspects of the Justice Department report and some recent false claims investigations. That report will be discussed with the Justice Department tomorrow. But the permissiveness, the passivity, and the laxness are unacceptable, and these attitudes go far to explain what is wrong with defense contracting and why the taxpayer is getting soaked.

Based on today's testimony, my forecast is further soaking for the foreseeable future.

The subcommittee will stand in recess until 10 o'clock tomorrow morning, in room SD-106, Dirksen Senate Office Building.

Mr. PAULISCH. Thank you, Mr. Vice Chairman.

[Whereupon, at 1 p.m., the subcommittee recessed, to reconvene at 10 a.m., Thursday, July 26, 1984.]

NAVY SHIPBUILDING PROBLEMS AT GENERAL DYNAMICS

THURSDAY, JULY 26, 1984

CONGRESS OF THE UNITED STATES,
SUBCOMMITTEE ON INTERNATIONAL TRADE, FINANCE,
AND SECURITY ECONOMICS OF THE
JOINT ECONOMIC COMMITTEE,
Washington, DC.

The subcommittee met, pursuant to recess, at 10 a.m., in room SD-106, Dirksen Senate Office Building, Hon. William Proxmire (vice chairman of the subcommittee) presiding.

Present: Senator Proxmire.

Also present: James K. Galbraith deputy director; and Richard F. Kaufman, general counsel.

OPENING STATEMENT OF SENATOR PROXMIRE, VICE CHAIRMAN

Senator PROXMIRE. The subcommittee will come to order.

In 1978, the Government's two chief law enforcement agencies with powers to police the business community—of course, that's the Justice Department and the Securities and Exchange Commission—opened investigations into alleged wrongdoing by the General Dynamics Corp. Never has so much time been spent investigating so many questionable corporate activities with so little result.

The Securities and Exchange Commission opened its investigation to determine whether General Dynamics misstated its financial position by overvaluing its 688 submarine claims against the Navy. A primary question was whether the company should have recorded losses in 1976 and 1977 instead of assuming that its huge cost overruns would be reimbursed by the Navy.

This question was highlighted by the fact that the company was forced to record a large loss in 1978 after settlement of the submarine claim. The Navy generously paid for most of the overrun but not all of it.

The SEC investigation took nearly 4 years. In 1982, it was closed. Here is the official SEC explanation:

> We recommend that this investigation be closed as the possible violations relate to a period of 6 years ago and as further investigation and any possible litigation will require the allocation of manpower that is currently unavailable, and that could be better spent on other, more current cases.

I submit a more classic bureaucratic catch-22 has never been discovered. Investigate a matter to death and then, of course, the matter is dead.

The Justice Department's inquiry followed the same course. After nearly 4 years that investigation also expired, whether from natural or unnatural causes we may some day find out. In February 1982, I wrote to Attorney General William French Smith to ask whatever happened to the General Dynamics case. In fact, I asked for a status report on four cases of alleged false shipbuilding claims: Litton, General Dynamics, Newport News, and Lockheed.

Here is the Justice Department report on General Dynamics:

> After a lengthy and complex investigation, the Justice Department advised Secretary of the Navy John Lehman on December 18, 1981, that we had declined prosecution. We then advised counsel for Electric Boat that we had declined prosecution and, at their request, issued a press release of our decision. As a result of our decision, we have closed our files in this matter.

Yesterday, we learned that the Navy may be the sleepiest agency in town when it comes to protecting the taxpayer in defense contracting. I say that with some hesitation because it was the only agency we heard from. The Navy talked yesterday but it seemed to be talking in its sleep.

Today, I hope to have a more cogent discussion of how the Government is protecting the Treasury from the excesses of some defense contractors.

One year ago, Justice issued a report called, "Review of Navy Claims Investigations," examining what happened in two of the large cases—Lockheed and General Dynamics—and one small one. They all came to nothing. We will be discussing this report and why the Navy disagrees with it.

We also plan to discuss some aspects of the General Dynamics case and the Newport News case which was dropped in 1983.

Our witness is Stephen S. Trott, Assistant Attorney General, Criminal Division.

Mr. Trott, if you would like to make an opening statement, you may proceed. Otherwise, we have some questions. Would you like to have your assistant or colleague at the table?

TESTIMONY OF STEPHEN S. TROTT, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. TROTT. No, thank you, Senator. I appreciate the offer, but I will go it by myself.

I really have no opening statement other than to say that the Justice Department welcomes the interest of this subcommittee into this area. It's clearly one which requires the light of day and I might say at the outset that I am somewhat embarrassed because I will be unable to provide this subcommittee with some of the information I know that it wishes because of rule 6(e) of the Federal Rules of Criminal Procedure, a rule that provides secrecy for grand jury proceedings and makes it a contempt of court for any member involved in a grand jury proceeding to reveal what goes on in front of a grand jury unless you have certain specific circumstances which do not exist at this hearing.

With that in mind, I would be delighted to try to answer some of your questions.

Senator PROXMIRE. Mr. Trott, how many attorneys and FBI agents were assigned to the General Dynamics investigation and what was the largest number assigned at any one time?

Mr. TROTT. Senator, as your know, I was not in the Justice Department at that time. I have documentation that would enable me to reconstruct precisely how many people were involved.

To the best of my knowledge, it appears that the General Dynamics investigation directly involved at least two- or three-line career prosecutors with the assistance of the supervisors that were involved, and numerous FBI agents, including an FBI team to look into the facts and circumstances of the case.

Senator PROXMIRE. When you say numerous FBI agents, could you give us some notion how many that would be?

Mr. TROTT. Senator, I can't, but I would be delighted to try to reconstruct that at a later time and submit it to the subcommittee for your consideration.

Senator PROXMIRE. There were never more than two or three attorneys at any one time involved?

Mr. TROTT. In General Dynamics and Electric Boat? There were committees that worked on and reviewed the evidence and the committees that reviewed the entire case consisted of as many as six attorneys.

Senator PROXMIRE. But the actual investigation and so forth was conducted by two or three?

Mr. TROTT. Two or three, no more, and that's not unusual.

Senator PROXMIRE. Did they work full time on this case and how much turnover was there while it was open?

Mr. TROTT. The case was started in the 1970's and, as expressed in some of our reports, there appears to have been some turnover during the investigation of the case. At all times, however, there appeared to have been at least two experienced people working on the case for the Justice Department.

Senator PROXMIRE. How much turnover?

Mr. TROTT. There appears to have been turnovers, as indicated in some of the reports referred to earlier by people originally assigned to the case.

Senator PROXMIRE. That means that there were people assigned, that they left and others came in and that was it, or that happened more than once?

Mr. TROTT. I believe it happened once, but I'm not positive. As I say, this was back in the 1970's.

Senator PROXMIRE. Were the U.S. attorneys assigned to the case all competent and experienced investigators and prosecutors?

Mr. TROTT. When you say U.S. attorneys, are you referring to U.S. attorneys themselves, assistants or trial lawyers for the fraud section?

Senator PROXMIRE. Well, both, people assigned to the case.

Mr. TROTT. I do not know some of them, but I have no reason to believe that these were not competent, qualified people, although I must tell you that one of the problems experienced by the Justice Department when it first got into these cases back in the 1970's, as I am able to reconstruct, was that we did not have the specific, precise knowledge of the Navy claims process at the outset that would have made it an easier job to get a handle on exactly what had gone on in this case. That's a problem that I think has long since been rectified, but when we got into it it became clear at the outset

that this was a very large and complex area about which we did not know a lot.

Senator PROXMIRE. Is it true that the U.S. attorney with primary responsibility for investigating the case recommended prosecution? In other words, this attorney believed there was sufficient evidence of criminal action to support a grand jury indictment?

Mr. TROTT. Whom are you referring to, Senator?

Senator PROXMIRE. The U.S. attorney with primary responsibility for investigating the case.

Mr. TROTT. Who was that? This case was turned over to the Justice Department Fraud Section. The Fraud Section in the Justice Department in the Criminal Division had primary responsibility for investigating this case.

Senator PROXMIRE. Well, I don't have the name, but was there any—did any of these attorneys believe there was sufficient evidence of criminal action to support a grand jury indictment, any indication of that?

Mr. TROTT. You are now asking for information that goes into the international deliberative processes of the Department of Justice. Let me just say this was a complex case. It was subjected to a very intensive examination by everybody involved in the case. The final conclusion of the indictment review committee in the Fraud Section of the Department of Justice was that insufficient evidence existed to proceed with the prosecution in this case.

Senator PROXMIRE. But isn't it true that the attorneys who worked on the case recommended prosecution?

Mr. TROTT. I am not sure. I was not there at the time. I don't know whether that was the case or not. In any event, I'm sure that the indictment review committee in the Fraud Section ended up recommending that there should be no prosecution in the case for lack of evidence of criminal intent in the submission of these claims.

Senator PROXMIRE. Can you try to determine that for the record and let us know whether or not the attorneys recommended prosecution?

Mr. TROTT. Senator, I'm not sure whether I can or will do that, for the following reasons. Not because there's any desire on the part of the Justice Department to obfuscate any of the facts in this case, but with all due respect, I'm not sure that that's germane, No. 1; and No. 2, it's not in the best interests of the Department of Justice or any agency of government to subject its deliberative processes to that kind of examination because it's simply, in the final analysis, in the future, prohibits us from going into in cases like this in depth from exchanging information and different ideas. I can and I will be able——

Senator PROXMIRE. I can't understand why that isn't germane. It seems to me that's something we should know. It's a relevant matter. We want to know whether the people who investigated this recommended prosecution or not. I realize the deliberative process in the Department of Justice has the right to make its decision, as it has, but it seems to me that here's a case in which when closed we would like to know the details of.

Mr. TROTT. I see no formal dissent in any of the records that I have read and gone over. As I say, I wasn't there. I have seen the recommendation from the indictment committee.

Senator PROXMIRE. You have seen no formal dissents?

Mr. TROTT. That's right.

Senator PROXMIRE. What about informal dissents?

Mr. TROTT. I would decline to answer that.

Senator PROXMIRE. You decline to answer?

Mr. TROTT. Yes.

Senator PROXMIRE. Has anyone from the White House discussed the General Dynamics case with you or anyone in your office?

Mr. TROTT. No, I don't believe that anybody—nobody from the White House has discussed the General Dynamics case with me. This is a very broad subject that you're including and I don't know whether there's been any discussion between the White House and anybody else in the Justice Department. There's been none with me.

Senator PROXMIRE. You know of no such discussions?

Mr. TROTT. No, I have no personal knowledge of that. Again, Senator, I'm somewhat at a disadvantage because, as I say, I have been in the Criminal Division less than 1 year and this was a case that was closed out long before I came, but I have no knowledge of any discussion. I can tell you these decisions were made by career Justice Department people in the Fraud Section and in the Criminal Division.

Senator PROXMIRE. Well, at any rate, you have not discussed this with anybody in the White House, although it's now being reconsidered I understand since the Veliotis information surfaced?

Mr. TROTT. I have not discussed it with anybody in the White House ever.

Senator PROXMIRE. Doesn't the Justice Department keep records of any White House communications?

Mr. TROTT. None that I have ever seen.

Senator PROXMIRE. Why wouldn't this be a sensible procedure? It's very important it seems to me for the record to know if there's a White House inquiry into a pending case you ought to have some record of that.

Mr. TROTT. I don't know whether that's the case or not. The Instructions that I received when I came into the Justice Department are that there is to be no direct discussion between the White House and the Justice Department on any pending cases. Any contact shall not go from the White House to any of the litigating division heads. It shall all go through the Deputy's Office, not through the litigating divisions. Those are rules that we have stuck to rather religiously.

Senator PROXMIRE. Well, did it go not to the litigating division but to the heads of the Department?

Mr. TROTT. I have no knowledge of any.

Senator PROXMIRE. Have you or anyone in your office discussed it with Navy Secretary Lehman or anyone else in the Navy?

Mr. TROTT. I have not discussed this with Secretary Lehman. I have discussed the general claims process with representatives of the Navy on various occasions. We have discussed the OPMA report to which you referred in your opening statement at length

with them as to what it means and where we go from where we found ourselves after the *Electric Boat* case. The OPMA report refers to the Defense Procurement Fraud Unit. As you earlier indicated and as I indicated, one of the aspects of this discovered by the Justice Department was that we needed a lot of specific information and knowledge in order to be able to do a professional job on these cases. We learned a tremendous amount during the investigation of the cases that you referred to and one of the things that we learned was that there was a need for a Defense Procurement Fraud Unit. It was established by the Attorney General and the Secretary of Defense and now exists in Alexandria. It's continuously staffed by experienced people and supported by the Fraud Section, by the U.S. Attorney's Office, and we now have the capacity to understand these processes and respond accordingly.

Senator PROXMIRE. Have you or anyone in your office discussed it with any General Dynamics officials or anyone representing General Dynamics?

Mr. TROTT. Discussed the case?

Senator PROXMIRE. Yes, sir.

Mr. TROTT. General Dynamics has expressed on a number of occasions concern over what I would call bad publicity and they have simply been stiff-armed by the Department of Justice and told we attend to our business the way we attend to our business.

Senator PROXMIRE. That's the extent of any discussion?

Mr. TROTT. Yes.

Senator PROXMIRE. In May the Wall Street Journal reported the U.S. attorneys that interviewed Takis Veliotis in Athens to discuss his allegations against General Dynamics. My staff called to get confirmation of this report and was told by one of the attorneys that while he did not know all the facts, he had "no reason to disbelieve the story in the Wall Street Journal."

Can you explain why the Justice Department would not confirm the Wall Street Journal story and will you confirm it now?

Mr. TROTT. Senator, as you know, the requirements of a criminal investigation in the interest of the people being investigated are that they be kept confidential. This is a tradition in the country, that we do not subject people to trial by investigation. The Justice Department has a long tradition of pursuing its investigations in this respect and also in the technical sense finds that quite frequently and very often it is not in the best interest of the investigation to conduct it openly and in public.

I can tell you that I first became aware myself of Mr. Veliotis last fall when he was indicted in the *Frigitemp* case in New York. It came to our attention about that time that Mr. Veliotis might have some information on the General Dynamics cases, as we are calling them for short here in this hearing.

From that time on, until May, we vigorously pursued any information that might exist concerning the case or anything that might be involved in the case. And I can confirm to you that we have discussed this matter with Mr. Veliotis.

Senator PROXMIRE. So your answer is that you confirm the Wall Street Journal story. You did discuss this with Mr. Veliotis.

Mr. TROTT. I never read the Wall Street Journal story. I am telling you that we have discussed this matter with Mr. Veliotis in Greece.

Senator PROXMIRE. I recognize that you're actively considering whether to reopen the case, but it was closed 2½ years ago. Why can't you discuss a case that's been closed that long?

Mr. TROTT. Well, the only parts of the case that I really cannot discuss are those parts that are enshrouded in the secrecy by rule 6(e) of the Federal Rules of Criminal Procedure. Beyond that, I can give you somewhat of a summary of the reasons why the case was closed, if you will permit me 1 second.

It was the analysis of the career prosecutors who examined the investigation in this case and all the evidence that the facts known at that time presented no prima facie case of a false claim. Throughout the period from the flight 2 bid in 1973 to the flight 2 claim in 1976, Electric Boat was besieged with strikes, inefficiencies, overruns, and other assorted problems. The record demonstrated that the company was in somewhat of a serious management situation that could be described as a management disaster and that the SM-1 contracts themselves were a financial disaster. Electric Boat apparently set out to recoup as much as possible with the multimillion dollar claim and the $554 million covering flight 2 and a portion of flight 1, which was the subject of this investigation.

In so doing, Electric Boat apparently devised certain legal theories and set up certain factual premises designed to recoup as much as they could in this equitable adjustment that they were seeking. Some of these legal theories and factual premises were inventive and some were farfetched, but having set them forth as the basis for their claim, the Criminal Division could find evidence that the company made a good faith effort to construct an honest claim around them. The theories and premises were disclosed to the Navy by Electric Boat. The Navy was free to challenge them. The Navy was indeed free to reject the claim.

Senator PROXMIRE. Could I interrupt just for 1 minute, Mr. Trott. What are you reading from?

Mr. TROTT. I'm looking at some notes that I have here from some of the internal Justice Department documents that I have procured to review this and try to learn myself what happened.

Senator PROXMIRE. Go ahead. I'm sorry.

Mr. TROTT. As I said, the theories and premises were apparently disclosed to the Navy by Electric Boat. The Navy was free to challenge them. The Navy was indeed free to reject the claim. The Navy accepted the claim and, in part, did challenge the theories and premises on disallowing much, and originally came up with a settlement of $125 million.

It was the belief of this indictment review committee and the career prosecutors that looked at this case that even the best evidence to support criminal prosecution is built on an inference of criminal intent with not a single document or witness to suggest an evil intent in connection with the claim. At best, there was circumstantial evidence from which one had to draw inferences. That circumstantial evidence was not supported by any direct evidence, any documentary evidence, or any witnesses to substantiate the in-

ference that there was some fraudulent criminal intent of the sort that's needed for a Federal criminal prosecution.

In was on the basis of a lack of evidence to sustain criminal prosecution, as far as I can tell, that these cases were declined, for no other reason.

Senator PROXMIRE. It's good to have the information you have given us, Mr. Trott. This is more than we have secured in the past.

Mr. TROTT. Senator, I have looked at this very carefully. As I said, I was not here, but I've gone through these files. I can find in these files the kind of work that I am familiar with as 20 years as a prosecutor. As far as I can tell, it represents the good faith effort of career prosecutors, dedicated to their job to examine every shred of evidence that they could find, and the judgment and conclusions they came to appear to have been the kind of professional judgment that one would expect from career prosecutors. This is a tough case. It was a big case. It was full of facts and circumstances that were very complex. But I am convinced on the basis of what I've seen that the decision by the Justice Department represented nothing more than a professional evaluation that insufficient evidence existed to bring a criminal claim.

That does not mean that the Department of Justice at any time endorsed this as a procedure. As clearly indicated in some of the reports that we issued, this was a nightmare. As I said before, I think it's very valuable that this subcommittee is exposing this process to the light of day.

It reminded me very much as I was going through this of the kind of story that I once heard years ago of a kid digging around in the floor of a well-fertilized stable. When asked why he was spending so much time doing that, he suggested, "There's got to be a pony in here someplace."

The question is whether or not there is a pony and the Justice Department could find no ponies that are described in the Federal Criminal Procedures in title 18 of the United States Code.

Senator PROXMIRE. What you're giving us now, as I say, is something that we haven't had before. We are glad to get it. We would like to get the facts lying behind those conclusions. It seems, though, that it's been very, very difficult for us. We have tried hard, as you know, to learn about questionable activities of a defense contractor violation but it may violate the regulations because of a loophole in the law or in the regulations, and it seems to me that as a matter of routime and in response to whatever inquiry Congress makes, that the Congress should be informed about it.

It has taken a long time and a lot of effort to get what you just told us.

Mr. TROTT. I appreciate that. As I said earlier, part of the difficulty here is that we become aware of much information that Congress would like to know about. And as I said, the problem is that in being aggressive and in using the grand jury and putting people under oath and issuing these kinds of subpoenas, we disenable ourselves—and this is the way things have to be I guess—from being able to come over here and share with you grand jury information and matters that we discover in our investigations.

So, in a sense, for one purpose we are doing exactly what we are supposed to be doing, but we have a hard time then talking to you about what we find because of these so well-established rules of grand jury secrecy.

Senator PROXMIRE. Isn't there a way to separate out the grand jury information? We just haven't been able to get anything before.

Mr. TROTT. Well, there is not. In some of these cases, almost the entire investigation is done with the vehicle of the grand jury. If you issue a grand jury subpoena to somebody and bring that person before the grand jury and find out what the information is, what we find out and the way we find it out disenables us from being able to talk to you about it. Rule 6(e), is very, very clear. The witnesses themselves are under no requirement of secrecy and under no prohibition to talk to anybody else. So, if you were able to bring in the witnesses themselves and they were willing to talk to you about what they said to the grand jury, that would be a decision that would be up to them.

Senator PROXMIRE. I'm going to ask Mr. Kaufman to proceed.

Mr. KAUFMAN. Mr. Trott, isn't it true, however, that in any investigation there are reports and memorandums prepared by the attorneys involved that make recommendations, that draw conclusions, that may not have grand jury material in them or that could be separated from the grand jury material so that those memorandums and those materials could be sent to Congress or to a congressional committee for review?

Mr. TROTT. As an abstract proposition, you are correct. In some cases, there are reports and there is information that does not come to the Federal Government by way of the grand jury.

However, in the investigations that I've reviewed there appears to be such a mixture of grand jury and nongrand jury—in some cases, almost all grand jury—that any observations made by Justice Department lawyers and recommendations and discussions are all predicated on grand jury information. So that there's such a close mixture of this that you really can't separate it out.

But there's another factor going on here also. As you know, the Justice Department has always been concerned about sharing internal deliberative memos. What we find is that when we do this, when this type of stuff gets subjected to the light of day, that people are not willing to give us the kind of free-flowing discussions that we need to take positions for the purpose of argument, to test, to push and pull; and in order to preserve our ability to get to the bottom of things in an investigation, we are reluctant to share with anyone our internal memorandums.

Mr. KAUFMAN. Is there a procedure in the Justice Department for trying to separate out grand jury material from documents and reports and memorandums?

Mr. TROTT. It's a procedure that we have used many times. It's ad hoc. It's case by case. We are used to doing it with redactions and everything else. On some of the cases that I have gone over here I'm advised that it's impossible. Newport News, for example, which I know you're interested in, I'm told by the lawyers who worked on that, is almost totally grand jury material and no separation process would be possible.

Senator PROXMIRE. We have a long experience of sanitizing classified material, making it available to the press and the public and the Congress on an open basis so we can debate it and discuss it. Why can't that same procedure be used here? Why can't you sanitize this and withhold what you need for grand jury purposes and disclose the rest?

Mr. TROTT. I'm told by the lawyers who worked on these cases that there's so much grand jury material in there that every document becomes a grand jury document. These are investigations that were conducted with grand juries. All the information that we got was by grand jury subpoenas duces tecum or personal subpoenas in grand jury testimony. There are thousands of pages of grand jury information. It was on the basis of the evidence that was gathered by way of the grand jury that all the conclusions and observations were made.

The material that is not has already been, to some extent, about this whole process released in the OPMA report that you have.

Senator PROXMIRE. Mr. Trott, you obviously have a very good case here and you're arguing it extremely well, but you put the Congress and the press and the public generally into a position where you're the judge and the jury and you decide what gets out and what doesn't entirely.

Would you agree to having the General Accounting Office make a study of this kind of decision as a case in point to determine what might be disclosed without damage to the grand jury process and what could not?

Mr. TROTT. We can't even show it to the General Accounting Office.

Senator PROXMIRE. You can't what?

Mr. TROTT. We can't show any grand jury material to the General Accounting Office.

Senator PROXMIRE. So you're just not accountable. You're in a position where—I'm not accusing you of this because I'm sure you're not doing so—but there would certainly be a perception that under these circumstances the Justice Department can conceal anything they wish to conceal from the press, from the Congress, from the public. Isn't that right?

Mr. TROTT. Senator, in a sort of functional sense, it has that effect, but I can only tell you that the reason for this is because the Federal law says that information that is recovered in the grand jury is secret and shall not be disclosed. The Supreme Court last term came down with two decisions on this, Sells and Baggott, and rules that even within the Justice Department, the Criminal Division lawyers finding evidence of civil wrongdoing against the Federal Government could not reveal evidence from the Criminal Division to the Civil Division so that the Government can sue to get its money back.

Now we are taking steps right now to try to do something about that and to get ourselves in a position where the left hand finds out information that can be then passed to the right hand of the Government, but this is the tough way in which these rules have been interpreted.

Senator PROXMIRE. What you're telling us, Mr. Trott, is that you're simply unaccountable, that you interpret it and that nobody

else—the GAO and nobody else can make an inquiry. The Defense Department, you know what tremendously important technological secrets they have which they have to keep from the public and from the Soviet Union. They are subject to investigation by the General Accounting Office. There haven't been any breaches that I know of from the General Accounting Office under these circumstances.

You say that you have no discretion because the law is clear on this. Shouldn't we amend the law if that's the case?

Mr. TROTT. You can amend the law if you wish. I'm telling you what the law is. But I will completely disagree with your statement that we are unaccountable.

Senator PROXMIRE. To whom are you accountable?

Mr. TROTT. You and this committee can bring before it any of the witnesses that were brought before the grand jury and you and this committee can ask the witnesses anything you wish and you and this committee can develop any type of a case you wish. And then you are free to register any opinions or conclusions about the case or the performance of the Justice Department based on that information.

As I said, rule 6 does not seal you off from the witnesses. If you wish to get in every witness to whom the Justice Department talked, you can do that by virtue of your subpoena power. You can develop everything that we knew in a sense, and then you're free to draw your own conclusions.

I'm simply telling you that when we gather information by the grand jury it is a contempt of court for us to release it to anybody. That's the law. If I were to do it or if I were to order my people to do it, I would be ordering them to commit a crime, a contempt of court.

Senator PROXMIRE. On the other hand, you're spending taxpayers' money. You gathered this information. You decide that the taxpayers' representatives—it's our responsibility to inquire into this—can't do so, can't do so with any effectiveness. You simply say we can't do so because the grand jury process would be compromised if that happened.

Mr. TROTT. Senator, I'm telling you you can call the witnesses, you can call the Navy people who were involved in this. You can call in anybody as you have called in me.

Senator PROXMIRE. We can do all kinds of things, it's true, but we can go into an enormously long, elaborate inquiries; but the fact is, you already have the information and you have done it. You have it available.

Mr. TROTT. And the fact is, also, that according to rule 6(e) I can't tell you what it is because Federal law prohibits that.

Senator PROXMIRE. But that's your interpretation. You said that the General Accounting Office can't challenge that.

Mr. TROTT. The General Accounting Office cannot get the information under the Federal rules. That's the law. As I said before, I'm not happy with this. We have a lot of information we would like to——

Senator PROXMIRE. That menas that nobody can challenge your interpretation.

Mr. TROTT. If you want to redo the case and challenge the interpretation, you can.

Senator PROXMIRE. Well, I just think it seems to me that the Justice Department is a sacred cow absolutely and has the capability of blocking any congressional inquiry or inquiry by duly constituted agencies like the General Accounting Office that has a long record of discretion and has inquired into the most delicate matters involving the State Department and the Defense Department with the CIA, with no record that I know of of disclosures or breaches of any kind. And you are saying that they can't act as our agency to get this information.

You see, the difficulty is that I think the Justice Department itself is put in a most unfortunate position because of the public suspicion involved here.

Mr. TROTT. I completely agree.

Senator PROXMIRE. People feel there may be some kind of a relationship between the Justice Department and a contractor, not maybe this contractor, but under other circumstances. And that suspicion is going to build and fester unless we have some way of getting some kind of independent inquiry.

Wouldn't you agree that it would be sensible to have some agency—the General Accounting Office, you name it—some other agency, however, which has the faith and trust of the Congress and the public to make an inquiry into these circumstances of this report?

Mr. TROTT. I certainly don't have any hesitancy in having that happen at all. The only thing that I've told you is that our hands are tied by Federal law with the respect to grand jury information. One of the hardest things for a prosecutor to do is to decline a case and then be unable to explain why. Rule 6(e) is one of the reasons why we cannot. It's one of the tough parts of our business. It's one that we just have to live with. I wouldn't have any hesitancy at all as a professional prosecutor—and I doubt any of the people would—to go over this with you in confidence in a way that would enable us to do these kinds of things in the future. But rule 6(e) says that this is secret information. I don't like it.

Senator PROXMIRE. The General Dynamics investigation—I'm sorry.

Mr. TROTT. I said I don't particularly like it in the sense that I think you do have an interest in looking into this, but that's what the rule is.

Senator PROXMIRE. The General Dynamics investigation has taken 4 years, a long time by any basis, and that period of time it seems to me to be unnecessarily long and result in the kind of situation we've been dragging on long enough you can let it die without the kind of criticism that you otherwise might have.

Did the investigation take so long because there were not enough staff resources to make a concentrated effort? In other words, if you had a larger budget, could you have expedited the investigation?

Mr. TROTT. You're asking me to render an opinion in hindsight about something that I wasn't involved in. It would be a guess on my part only and I hesitate to give you that guess.

Senator PROXMIRE. Well, now that's one of the problems involved here.

Mr. TROTT. Well, I can tell you——

Senator PROXMIRE. You've only been on the job, as you say, for a year. Is that right?

Mr. TROTT. Yes.

Senator PROXMIRE. And you're a highly competent person, but there's no way we can get at this because the other people are gone. They're no longer with the Federal Government. They don't have the responsibility. They don't have access to the information you have.

Mr. TROTT. I will agree with you that we had problems with this case. As I said at the outset, we did not have the kind of technical information that we needed to be able to jump on it instantaneously. It appeared to be a learning process with the lawyers and the agents who were involved and that's why we created the Defense Procurement Fraud Unit in Alexandria that is staffed now by people who work constantly with representatives of the military agencies involved to stay abreast of this. We have solved the problem of resources. We have solved the problem of information.

As part of our white collar crime program, fraud against the Government and defense procurement fraud is the number one priority of this administration. We are now conducting seminars for U.S. attorneys. We are training our own people and this is an area in which we have put a lot of attention.

So if there was a problem back in the 1970's when this started, I'm confident that it is no longer one now.

Senator PROXMIRE. Are you saying that if you had a big case now involving hundreds of millions of dollars, like the General Dynamics case, you could investigate it in less than 4 years?

Mr. TROTT. I have every confidence that we could investigate it thoroughly and get it done within the statute of limitations. I believe now we have the expertise and the people in place to do it.

Senator PROXMIRE. The statute of limitations is 5 years. That's a long time.

Mr. TROTT. That is a long time.

Senator PROXMIRE. This was 4 years and we thought that was terribly long. You're telling me you're confident that you could make an investigation in 5 years.

Mr. TROTT. Well, you're asking me to guess about an abstract case the dimensions with which we're not coping and I simply can't do that. I can tell you that I believe we have the capacity now to respond to anything that we're hit with.

Senator PROXMIRE. Well, we're just saying that 4 years is too long. You should be required to do it in less time and do it in less. Four years is a long, long, long time.

Mr. TROTT. I don't disagree with you at all. There are some trials that take 2 years.

Senator PROXMIRE. Well, we're not talking about a trial. We're talking about an investigation.

Mr. TROTT. In the abstract, I can't disagree with you, but we have to talk about a particular case if we're going to make any progress on this.

Senator PROXMIRE. This case has never been to trial and it's taken so long.

Mr. TROTT. That's right.

Senator PROXMIRE. Is it true that you first learned that Veliotis was offering to give the Government information about wrongdoing in General Dynamics last fall?

Mr. TROTT. Yes.

Senator PROXMIRE. The first you heard of it?

Mr. TROTT. Yes.

Senator PROXMIRE. Why did it take so long for the Justice Department to send somebody to Greece to talk to Veliotis and weren't you concerned about losing a chance to find out what he knows in the months you let go by? Haven't potential witnesses disappeared or had something happened to them when a lot less was at stake than in this case and aren't you concerned that this might happen in this instance?

Mr. TROTT. With all due respect, Senator, could you ask those questons one at a time?

Senator PROXMIRE. All right. I'll start it again. Why did you take so long to send somebody to Greece to talk to Veliotis and weren't you concerned about losing the chance to find out what he knows in the months you let go by?

Mr. TROTT. We were concerned to get the information that he might have. The only reason that time intervened between our first knowledge of Mr. Veliotis and the trip to Greece was because Mr. Veliotis was indicted last fall in the Frigitemp case, a multimillion dollar fraud against the Government up in New York. Mr. Veliotis was an indicted defendant and he was a fugitive outside of the country. As such, he was represented by a lawyer.

By the law, we were required to work through the lawyer and we wanted to make sure this process was done so that we could protect the Government's interest in the Frigitemp case. There was a long series of negotiations. They were not drawn out for any other purpose but to make sure that when we got the information we would get it in a way that protected all the Government's interests and not just some of them. It could not have been done any sooner than it was.

Senator PROXMIRE. You had to work through the lawyers in New York and not contact Mr. Veliotis who was in Greece until May? You had to wait 6 months to talk with him?

Mr. TROTT. That's absolutely correct, and every decision that was made in that respect was a professional decision with only two objectives in mind. The first was to get the evidence and the second was to do so in a way that would protect all of our options and not foreclose anything before the trial in New York.

Senator PROXMIRE. Did you press to try to see Mr. Veliotis before that?

Mr. TROTT. Yes.

Senator PROXMIRE. Well, you can see why investigations take 4 years when it takes a half a year at least before you can talk to a witness that could provide useful information.

Mr. TROTT. The man was a fugitive from justice, hiding from the Federal Government.

Senator PROXMIRE. Well, you knew exactly where he was and he had indicated he was anxious to talk. All you had to do was—you can fly over there in 1 day—less than 1 day.

Mr. TROTT. The worst thing you can do in a situation like this is run in unprepared and mess up your own case before you know what you're doing. This was done carefully. It was done professionally. Mr. Veliotis has been talked to.

Senator PROXMIRE. The last part of the question was haven't potential witnesses disappeared or had something happen to them when a lot less was at stake than in this case? This was a case involving hundreds of millions of dollars and the life of a witness might very well be jeopardized under those circumstances. Weren't you concerned about that?

Mr. TROTT. Are you speaking of something specific or are you talking in the abstract?

Senator PROXMIRE. Well, either way. In this case, it seems to me that Mr. Veliotis was ready to talk about a situation that could involve an enormous amount of money and result in possibly potentially people going to jail, people with great power and influence, and something could have happened to him. Witnesses do disappear. They are bumped off, as they put it, under these circumstances sometimes. And it seems to me that that's another reason why this should have been expedited.

Mr. TROTT. It was expedited and I think the proof is in the pudding. Mr. Veliotis did talk to us. We did not lose the witness. We must have done something right.

Senator PROXMIRE. You were lucky.

Mr. TROTT. I don't believe we were lucky. I think we were professional.

Senator PROXMIRE. Does it seem to you from the information we released yesterday that significant portions of Veliotis' allegations have been substantiated and that there may be substance to other aspects of his story?

Mr. TROTT. I'm not at liberty to discuss the substance of any information we may have on this subject. I'm sorry.

Senator PROXMIRE. Is it true that in each of the other shipbuilding claims cases, Newport News and Lockheed, the prosecutors recommended prosecution but were overruled by their superiors in Washington?

Mr. TROTT. I can't comment on that.

Senator PROXMIRE. Why not?

Mr. TROTT. For the reasons I discussed before. It's the internal deliberative process.

Senator PROXMIRE. Those cases are closed. There's no indication that you're going to reopen the Newport News or Lockheed case. Why can't you give us all the facts? You can't tell us in the cases pending because it's pending and when the case is closed you can't tell us because of some other reason.

Mr. TROTT. Well, you're asking a followup question and, with all due respect, that doesn't relate to the original question. I'm simply telling you that the internal discussions of the people involved are matters that we do not disclose in public. I can tell you that the decisions that were made were made by career people. They were based on the evidence and the facts and the law.

Senator PROXMIRE. You cannot tell us whether or not the prosecuting attorneys recommended prosecution or were overruled?

Mr. TROTT. I'm getting you what the decision was.

Senator PROXMIRE. Well, you're not telling me whether or not the prosecuting attorney recommended another course of action.

Mr. TROTT. The career people working on these cases recommended against prosecution.

Senator PROXMIRE. But the prosecuting attorneys is my question.

Mr. TROTT. Beyond that——

Senator PROXMIRE. You can't tell me what they recommended?

Mr. TROTT. With all due respect, Senator, I won't go into the internal deliberative processes that were involved in these decisions.

Senator PROXMIRE. Well, obviously, the officials who had the authority to do so recommended that you kill the case. They recommended against prosecution. I'm asking you what the prosecuting attorneys recommended in a case that's closed.

Mr. TROTT. I'm talking about the prosecuting attorneys. I'm talking about the career people responsible for these cases in the final analysis.

Senator PROXMIRE. Well, somebody killed it, obviously, but my question is, did the prosecuting attorneys recommended in Newport News and Lockheed that the cases should be pursued, the prosecutions should be pursued?

Mr. TROTT. The recommendations that came out of the sections responsible for these cases was that no prosecution was in order on the basis of the evidence and the law.

Senator PROXMIRE. Will you give us the prosecuting memos in those cases? These cases are now closed and over. Will you give those to us?

Mr. TROTT. I cannot, Senator. They are all 6(e) material, Lockheed, I'm not sure about. I haven't looked at that. Newport News, I am.

Senator PROXMIRE. How do you know whether it's all grand jury material or not?

Mr. TROTT. Because I have discussed the *Newport News* case with the lawyers handling it. I've read the files and all the information in there appears to be information that was received through the grand jury, and I'm so advised by them that it is.

Senator PROXMIRE. GAO can't check that to find out, to give an objective opinion?

Mr. TROTT. By law, GAO is not entitled to access to grand jury information.

Senator PROXMIRE. Don't you see the difficulty in that?

Mr. TROTT. I absolutely see the difficulty that provides.

Senator PROXMIRE. Don't you think that's a defect when a case is closed?

Mr. TROTT. I'm not sure I see that as a defect. The grand jury secrecy was provided so that people who are investigated are not subjected then to public obloquy if there's a finding by the grand jury.

Senator PROXMIRE. We're talking about the GAO. I'm not saying a newspaper should have it. I'm not saying that a Member of Congress should have it. I'm saying the General Accounting Office, which has a record, a 100-percent record, of discretion in these

matters, should be able to take a look at it and then make a general conclusion based on it without going perhaps into the specific situation to make a judgment.

Mr. TROTT. Senator, I don't see that it will do us any good to debate the merits or the demerits of rule 6(e). It's the law and has been for years.

Senator PROXMIRE. Haven't you given prosecuting memos to other Members of Congress in the past?

Mr. TROTT. Not 6(e), not that I'm aware of. Anybody who did that would be committing a contempt of court.

Senator PROXMIRE. But if you separated out the 6(e) materials?

Mr. TROTT. Yes, where it is possible.

Senator PROXMIRE. Why can't you do it in this case?

Mr. TROTT. As I told you twice before, Senator, I'm advised that the *Newport News* case, for example, is exclusively 6(e) material.

Senator PROXMIRE. How about Lockheed?

Mr. TROTT. As I said, I'm not sure about Lockheed. I'll have to look at that.

Senator PROXMIRE. Will you look at it and give me a report on it?

Mr. TROTT. Yes, I will.

Senator PROXMIRE. Do you agree with the Navy officials who said yesterday that it is only puffing to exaggerate a claim against the Government and imply that a grossly exaggerated claim may not violate the law against false claims?

Mr. TROTT. I really can't agree or disagree with that. That's a bunch of verbiage that relates to nothing, with all due respect to the person who said that.

Senator PROXMIRE. Well, now, wait 1 minute. I'm not talking about verbiage. I'm talking about a statement by a Navy official who said that if a firm makes a claim against the Federal Government and deliberately exaggerates the claim, No. 1, it's only puffing—we can use any term we want—but he also went on to indicate that a grossly exaggerated claim, in his judgment, would not violate the law against false claims.

Mr. TROTT. That type of information is so far out of my training that I really can't respond to it. Abstract propositions are interesting to talk about, but I don't think they lead us anywhere. I can tell you that the elements of——

Senator PROXMIRE. Let me just say, the difficulty is that where they lead us is if you're going to have any way of protecting the Government and the taxpayer in these cases of claims, and you say that the firm can exaggerate to any extent it wishes without violating any law, it puts you in a kind of position you've been in lately, which is that you have colossal overruns, no penalty on them.

Mr. TROTT. That's why I would never say that. Every case depends on the facts of the case, the circumstances of the case and the law. And to say something is puffing, whether you're going to prosecute that or not, is a ridiculous waste of time. We have to go into the exact statements that were made, the intent with which they were made, the effect of the statements, and do a legal analysis on a precise set of facts. In the abstract, it gets me nowhere to say that puffing is or is not the basis for possible fraud charges.

Senator PROXMIRE. Well, it's your judgment as a lawyer that even a grossly exaggerated claim would not necessarily violate the law against false claims; is that possible?

Mr. TROTT. If we're talking about logic I and syllogisms, yes. But it gets me nowhere to talk that way when you're not referring to some specific set of facts and circumstances. It would be preposterous for a prosecutor to try to set standards like that in anticipation of what he or she would or would not get in a particular case.

We are proscribed by the elements of 18 U.S.C. 287 that requires the Government to prove, one, making or presenting; two, a claim against the United States; three, with knowledge; four, that the claim is false, fictitious or fraudulent. If we get facts and circumstances that that has happened and evidence that indicates that we could prove it in a court of law, we will aggressively file cases against anybody responsible for the behavior.

If, on the other hand, the evidence does not fulfill those requirements, by law we are obligated not to file a case.

Senator PROXMIRE. Mr. Trott, look at it from the standpoint of the poor old taxpayer. The *Locheed* case, the specific case, *Newport News, General Dynamics* case, all colossal claims. In every single instance, without exception, they were dismissed by the Justice Department with no prosecution.

It would seem that the witness from the Navy yesterday was stating an unfortunate fact of life. I'm not talking about generalities. I'm talking about three specific cases. I don't know of any cases involving a big contractor where the Justice Department has taken any kind of effective action. We have looked into a lot of them.

Can you give us an example?

Mr. TROTT. Well, yes. We discussed some of those the other day in your office. I think the Sperry case is a recent case. We had a mischance condition up in Philadelphia recently. We had what I considered to be a good victory in a Rockwell case out in California. We have a number of cases that are being prosecuted against defense contractors and it's one of our highest priorities.

Senator PROXMIRE. We talked about this in the office the other day. You cited a case of fraud that involved $1 million. We're talking about hundreds and hundreds and hundreds of millions of dollars in each of these cases. It involves big money. The Justice Department can't seem to find a violation of the law.

Mr. TROTT. If you're talking about the Frigitemp case in New York, that's a case involving almost $50 million that we just secured a series of convictions in, and also there's Electric Boat and they were all claims against the Government.

Senator PROXMIRE. It's not one of the big contractors. Frigitemp is a small, marginal kind of operation—bankrupt.

Mr. TROTT. It involved Electric Boat and it involved almost $50 million. I don't think that's insignificant.

Senator PROXMIRE. Electric Boat is unscathed.

Mr. TROTT. If you're attempting to indicate that we are asleep at the switch, Senator, I can tell you we are not. But that appears to be a question of where the beauty is in the eye of the beholder. The Defense Procurement Fraud Unit is a very aggressive group. They are under instructions from me and the Attorney General to go out

and find fraud against the Government wherever it is and when we have a prosecutive case, bring it.

Senator PROXMIRE. Isn't the purpose of the False Claims Act to discourage the filing of false claims against the Government?

Mr. TROTT. That's one of the purposes, yes.

Senator PROXMIRE. Isn't the purpose defeated if the Justice Department fails to investigate grossly exaggerated claims involving the biggest contractors?

Mr. TROTT. I suppose so, if we failed to investigate that, yes. These were investigated.

Senator PROXMIRE. It's true that any lawyer can dream up a theory to support any wild claim, no matter how exaggerated it is. Does this mean that as long as the theory that it's a grossly exaggerated claim the Justice Department will not investigate it?

Mr. TROTT. No.

Senator PROXMIRE. Do you agree that General Dynamics, Lockheed, and Newport News claims were all grossly exaggerated and should have been investigated?

Mr. TROTT. These cases absolutely should have been investigated and anybody who would have decided not to investigate these cases would have been making a mistake.

Senator PROXMIRE. All right. Now explain why the difference between a grossly exaggerated claim and a false claim and why a contractor who makes a grossly exaggerated claim against the Government should not be prosecuted.

Mr. TROTT. With all due respect, I think we're engaging in semantics. Nowhere in the Federal law does it say that it's a Federal violation to bring a grossly exaggerated claim, as compared to even an exaggerated claim. Federal law has certain specific elements in the statutes and those are the elements that we look for. If we can prove those elements on the basis of the evidence, we will bring cases. If we can't, we won't. It would be a violation of our duty to prosecute people on cases that we don't think exist simply for the purpose of avoiding criticism.

Senator PROXMIRE. What you're telling us is that the law isn't working, it seems to me, because there's nothing to discourage a contractor from filing the most grossly exaggerated claim as long as it can't be proven that he's maliciously doing it or he's doing it on the basis of a smoking gun.

Mr. TROTT. Well, certainly it might not be a criminal violation, but there is nothing to indicate that whoever is receiving the claim should just blindly accept it. To expect the criminal law to come in and clean up all messes is a mistake. The agencies with responsibility in the first instance are responsible for making sure that they protect the Government's money and they have an obligation not to pay claims that are grossly exaggerated.

Senator PROXMIRE. I'm going to ask Mr. Kaufman to follow up on this. Go ahead.

Mr. KAUFMAN. Mr. Trott, the problem is whether the statute is effective for the purpose Congress intended. It says it's a crime to file a false claim and you have conceded that claims can be grossly exaggerated and the shipbuilders were grossly exaggerated, but you're making a distinction between a grossly exaggerated claim and one that's false.

Mr. TROTT. Absolutely.

Mr. KAUFMAN. And that's the kind of semantic distinction that we're having trouble understanding.

Mr. TROTT. Mr. Kaufman, I can tell you that it simply is not a standard that I know of anywhere in Federal crime that says a grossly exaggerated claim is against the law. It says that a false claim is against the law and the cases and the statutes and the books describe what the elements of that are.

As I said, if we find evidence that in our professional judgment satisfies those elements, we can and we will aggressively file charges.

There's no question about it. You get into an area of judgment. There is no scientific way of deciding when something is a false claim or it isn't a false claim. You have to go by the evidence. You have to go to the people. You have to go to the documents and you have to go to the law, and there's an area of judgment.

It was the judgment of our experienced people that we did not have the kind of evidence necessary to bring Federal criminal charges. I find not a word, not a scintilla of evidence in the files that I have looked at that anybody just said, "Oh, what the hell, this is a tough case, let's just walk away from it." Or, "So what, this is General Dynamics." These are professional people who looked hard for evidence and couldn't find it.

Mr. KAUFMAN. In other words, you said earlier in reading your summary of the General Dynamics case that the claims were based on inventive and farfetched theories.

Mr. TROTT. Yes, and they were put out front. When these theories were advanced, they were explained to the Navy and, as I indicated, the Navy, when faced with a half a billion dollars' worth of claims, denied 80 percent of them and cut it back down to $125,000. The Navy knew what they were dealing with and they didn't buy that.

Mr. KAUFMAN. So even then, in a case where the contractor files a claim that's 10 or 20 times as large as can be substantiated and thereby grossly exaggerated, as long as it's accompanied by any inventive, farfetched theory that a lawyer can dream up, it's not prosecutable?

Mr. TROTT. No; such a claim would have to have some arguable basis such that would defeat the requirement that we prove beyond a reasonable doubt that there was a fraudulent intent. And there's a line there and there's an area of judgment. You're going to find some claims that are absolutely clear. They will be false and nobody will disagree. You will find some claims that everybody will agree it is absolutely clear that the claim is legitimate. As you get closer to the center and the theories get more inventive and more farfetched, then you have a disagreement.

The question is whether or not the theory is being advanced in good faith or with a fraudulent intent to defeat the Government. And it's the judgment call of the prosecutors and the grand jury whether or not the claim is so grossly exaggerated and so farfetched and so inventive that it's crossed the line into fraud.

As I said, that's a question of judgment. There's no scientific way that one can ever decide that by ascribing point values to things. And I guess you're right—we're going to have to depend and we, as

a country, are going to have to depend on the aggressive goodwill of people who are prosecutors working with grand juries who make these decisions.

Senator PROXMIRE. Well, that response, it seems to me, again brings us back to the accountability situation. We just have to rely without the accountability. We don't have that accountability now, in my judgment, because we have no objective umpire that can go in like the General Accounting Office and make a judgment. Isn't that right? It gets us right back to that original position that we were pushing before.

Mr. TROTT. As I say, you are free to bring in any witnesses that you wish. In a sense that we cannot share with you much of the information that we gathered, it makes it difficult for you to know the extent to which we have examined it.

Senator PROXMIRE. You see, Mr. Trott, neither this subcommittee nor any committee that I have served on in the 27 years I've been here can act as a Justice Department or should. We can't go through all these elaborate investigations. I think we have a highly competent staff. I think we have too much staff. But if we are going to do the kind of job that you're suggesting here, we would have to have a replica of the Justice Department on all kinds of staffs around here and it would be incompetent and impossible. It's not going to be done.

So if we're going to get results here, it seems to me we have to have some way of sharing the kind of information you have while protecting the grand jury process fully, but also providing information far more quickly and thoroughly and on an objective basis to the Congress. I still come back to the point where I cannot understand—you keep saying it's against the law to let GAO get into this. It seems to me if that's the case, that law should be changed, and I would hope that you would recommend that it would be changed.

Mr. TROTT. Senator, if I were a member of your staff, I would sit down tomorrow with rule 6(e) and take a look at it and try to draft some proposal that might change that to enable you to get access to grand jury information when you can show to a court that there's a substantial national issue involved of interest to the Congress.

But the state of the law right now is that grand jury information is not shared outside of the reasons for which it was gathered.

Senator PROXMIRE. Earlier I mentioned the study issued by the Justice Department on review of Navy claims investigations. The Navy in its letter to you on June 18, 1984, criticized the report because of its conclusions that in the future the Navy should not refer cases to Justice unless there is "smoking gun" evidence of a false claim.

What is your response to the Navy criticism?

Mr. TROTT. What was the date of this letter to me, Senator?

Senator PROXMIRE. June 18.

Mr. TROTT. 1984?

Senator PROXMIRE. Yes, sir, June 18, 1984, was the Navy's letter to you.

Mr. TROTT. Who signed the letter?

Senator PROXMIRE. I've got a copy of the letter here. It's signed by Walter Skallerup, Jr.

Mr. TROTT. I remember that letter now. I met last fall with representatives of the Navy on this OPMA report. Let me tell you what this report was.

This was an internal attempt to debrief what had happened in some of these cases and to discuss the difficulties in these cases. It was a document that was designed to enable management in the Criminal Division in the Department to grapple with the complex problems presented by these cases.

The report itself discusses some of the evidentiary problems that we find in these cases. It does not represent the policy of the Department. I have told the Navy we want the Navy to come over to us with anything that they believe is a criminal violation that we in the Defense Procurment Fraud Unit and Fraud Section in the U.S. attorneys offices will aggressively tackle these things and, where necesary, take them into the grand jury, even though that might cause you 2 years from now to criticize us when we can't tell you what we find out in the grand jury, and try to get to the bottom of it and see whether there's a charge.

I don't know of anybody who feels that somehow this exists as an inducement to contractors to continue in their ways of attempting to cheat the Government out of money.

Senator PROXMIRE. It makes it a lot easier for them. Unless they have a smoking gun they are home free unless you catch them with the smoking gun.

Mr. TROTT. This isn't the policy of the Department with respect to cases. This is a review of what went on in the past. To the extent this indicates to you or anybody else that we are not aggressive, that's not accurate.

Senator PROXMIRE. You say it's a review of what went on in the past?

Mr. TROTT. That's right.

Senator PROXMIRE. That's the best basis for making a judgment, isn't it?

Mr. TROTT. That's a good basis for starting to make a judgment. I agree with you.

Senator PROXMIRE. Then you feel that unless there is a smoking gun evidence, is that right—did I misunderstand your response?

Mr. TROTT. No, I didn't say that at all. We won't know whether there's a smoking gun until we investigate. If the Navy believes it has evidence, or any service agency or any Government agency believes that it has——

Senator PROXMIRE. Well, wait a second. You said——

Mr. TROTT. Can I fininsh?

Senator PROXMIRE. You say you won't know whether there's a smoking gun until you investigate, but you have to have a smoking gun?

Mr. TROTT. I'm sorry. I didn't follow you.

Senator PROXMIRE. You say you won't know if there's a smoking gun until you investigate it.

Mr. TROTT. There are two issues here. The first is whether or not we will investigate. I'm telling you that any Government agency that comes to us and says we believe we have evidence of a crime

committed against the Government here we are going to very aggressively look at that. If it requires investigation, we will do so. We do not require Government agencies to walk in the door with cases tied up in a nice, red ribbon.

Senator PROXMIRE. But you do investigate without a smoking gun?

Mr. TROTT. Absolutely.

Senator PROXMIRE. I understand the report was circulated by the Criminal Division of the Navy to the GAO and the House Government Operations Committee and by circulating the report so widely it was intended to be an implied statement of Justice Department policy.

Mr. TROTT. No. It was disseminated for the purposes of discussion and, believe me, we learned a lot from the discussion of circulating this report.

Senator PROXMIRE. Do you agree with the conclusions in the report and do they reflect the Justice Department's position?

Mr. TROTT. Can you be more specific? There are a lot of conclusions in the report.

Senator PROXMIRE. Conclusions that the Navy disagreed with?

Mr. TROTT. Can you tell me which those are and I will be delighted to respond. There are a million conclusions in this report.

Senator PROXMIRE. Well, let me just read the part of it that I had before. The Navy in its letter to you on June 18 criticized the report because of its conclusion that in the future the Navy should not refer cases to Justice unless there is a smoking gun evidence of a false claim.

Mr. TROTT. That's not accurate and we have told the Navy that's not accurate and any interpretation of this report that indicates that that's the case is wrong.

Senator PROXMIRE. Did you reply to the letter that I cited before from Mr. Skallerup to that effect?

Mr. TROTT. I'm not sure whether I did or not, but I personally had meetings with representatives of the Navy and I have told them exactly what I told you today.

Senator PROXMIRE. You don't know whether there was a reply to the June 18, 1984, letter?

Mr. TROTT. Sitting here right now, I don't know.

Senator PROXMIRE. Well, shouldn't there be one? That letter is more than 1 month old.

Mr. TROTT. As I say, I had numerous meetings with the Navy, with the Fraud Section of the U.S. attorney's office. What I said to them I'm saying to you now.

Senator PROXMIRE. Do you agree with the letter or not?

Mr. TROTT. In what respect?

Senator PROXMIRE. In the respect we have been askirg you about. Let me read this.

Mr. TROTT. OK.

Senator PROXMIRE [reading]:

> Our principal concern with the draft report is that both Navy and Justice Department officials and Navy contractors could interpret it as representing Crininal Division policy. Should that be the case, its conclusions that the Department of Justice will not prosecute grossly inflated shipbuilding claims in the absence of the smoking gun evidence would result in a resurgence of inflated omnibus claims which we saw

in the 1970's, since the threat of the criminal prosecution would be substantially diminished, if not eliminated. Further, to imply that the Navy should not refer matters to the Justice Department without this smoking gun evidence ignores the fact that we have lifted criminal investigative authority and resources and accordingly we must rely on the Department of Justice to investigate and determine whether a crime has been committed. Also, the implication that the Navy expects its contractors to submit inflated claims would facilitate negotiations and the implication that the Navy undermine the Department of Justice's ability to prosecute shipbuilders by entering into settlements simply do not square with the facts. For instance, the Department of Justice advised both the Navy and the Congress that they had no objection to Public Law 85–804 settlement between the Navy and Electric Boat.

Mr. TROTT. There's a lot of information in there. To the extent that they are concerned that the report may be a signal to defense contractors to come forward and try to cheat the Government. I hope it is not taken that way. It was not intended that way and, as I say, to the extent that somebody might think that, it's not true. We are going to be aggressive. We are not going to require smoking guns. We are going to pursue investigations when agencies come to us and we are going to file cases where the evidence exists to bring cases.

Senator PROXMIRE. The Navy strongly disagrees with the implication in the report that the Navy expects its contractors to submit inflated claims to facilitate negotiations.

What is your reaction to that specific criticism?

Mr. TROTT. I really don't have one. I'm not familiar with their claims process in the sense that it's described there in that letter. I doubt that the Navy expects contractors to do that.

Senator PROXMIRE. Let me reread just a part of what I read before:

Also, the implication that the Navy expects its contractors to submit inflated claims to facilitate negotiations and the implication that the Navy undermine the Department of Justice's ability to prosecute shipbuilders to enter into settlements simply do not square with the facts. For instance, the Department of Justice advised both the Navy and the Congress that they had no objection to the Public Law 85–804 settlement between the Navy and the Electric Boat.

Mr. TROTT. Senator, I really have no knowledge of that and I just don't know whether that's the case or not. If it's an implication that's in this report, it should be repudiated.

Senator PROXMIRE. Will you take a hard look at this letter and give us your response and comments on it?

Mr. TROTT. Surely.

Senator PROXMIRE. I'd like to ask just a few questions about the *Newport News* case. The Navy claims settlement board awarded the company in Newport News about $200 million out of a claim that totaled more than $900 million. Your office began investigating in 1976 and closed it in 1983. That's a 7-year period.

Why did it take so long to investigate that case of Newport News?

Mr. TROTT. All I can tell you is that it appears to have been an extraordinarily complicated case with many, many witnesses, many, many documents, and it took a long time. As I say, I wasn't there. Beyond that, I can't re-create exactly what happened and why.

Mr. PROXMIRE. Well, of course, a 7-year investigation just seems to me to be appalling.

Mr. TROTT. I couldn't disagree with you.

Senator PROXMIRE. I understand the U.S. attorney's office in Virginia which investigated the case recommended to your office in 1981 that it be prosecuted and that it was then transferred to the U.S. attorney's office in the Justice Department. Your office then sat on the case for about 2 years and then killed it. Is that correct and can you explain these events?

Mr. TROTT. No; it's not correct.

Senator PROXMIRE. In what respect?

Mr. TROTT. We did not sit on the case and we did not kill it. We investigated it professionally and very carefully and came to the conclusion that the evidence that was presented to us and that we were able to find was insufficient to bring Federal criminal charges. That's the answer.

Senator PROXMIRE. What did you do for those 2 years after it was transferred?

Mr. TROTT. I did nothing. I wasn't there. But the lawyers who worked on the case reviewed the evidence, secured evidence, reviewed documents, secured documents, and analyzed what they had. They did not sit on anything and they did not kill anything.

Senator PROXMIRE. Meanwhile, the statute of limitations passed and whether you killed it or not, just the lapse of time did, and the fact that the Department took so long to investigate it made it a dead issue. It was dead. It was killed.

Mr. TROTT. The statute ran out, but not before the conclusion was reached that there was no prosecutable case.

Senator PROXMIRE. When did the statute of limitations run out?

Mr. TROTT. I don't know and it would probably take me 10 minutes digging through here to give you an exact date.

Senator PROXMIRE. Can you give us that?

Mr. TROTT. Can I work with Mr. Kaufman? Are you making a list of things that you'd like me to supply you after the hearing on behalf of the Senator? I'd be delighted to work with Mr. Kaufman and find out any information that you need so that we can supply it to you.

Senator PROXMIRE. Mr. Kaufman is nodding, indicating he will do so.

Mr. TROTT. Thank you.

Senator PROXMIRE. Was the *Newport News* case dropped because the statute of limitations had lapsed or because there was no evidence of criminal wrongdoing?

Mr. TROTT. As far as I can tell, it was dropped because there was no case.

Senator PROXMIRE. Now it seems to me there's good reason for the Justice Department to rethink these cases and the way they were handled and to consider the lessons learned and whether there's need for new legislation. Will you agree to do such a study and provide this subcommittee with a report of your findings?

Mr. TROTT. Senator, that's one of the reasons the OPMA report was done. It apparently has not satisfied many people. And in a sense, that was good, because there were some ideas that were advanced in the OPMA report, as I said, that have been rejected. To that extent, it did cause us to rethink and redo and to go over what has been done, and that's why the Defense Procurement Fraud Unit was put in, because we recognized the importance of this area

to the American taxpayers, to the concept of good government, and we wanted to make sure that the Justice Department was equal to the task of investigating these complex cases and making the judgment calls that are required to decide whether criminal charges exist or not. And I would be delighted to continue to work with you and Mr. Kaufman in this regard on this particular subject and to provide you with our thinking. I've tried to do that today. We are going to be aggressive. We have told the agencies to come to us. We have even interposed the Defense Procurement Fraud Unit between agencies and the U.S. attorneys to the extent that we have the expertise there, we want to use with the U.S. attorneys on these cases. So we have come a long way. In many respects, these cases that we're talking about today and in this report have been overtaken by events and those events—each one of them has been designed to overcome some of the problems which were in the OPMA report and some of the problems that I have referred to today.

Senator PROXMIRE. Will you give us a new report and give us your recommendations?

Mr. TROTT. Senator, If you will give me a list of things that you would like me to address, I'd be delighted to try to address those.

Senator PROXMIRE. Very good, We will certainly do that. I appreciate that.

Mr. TROTT. Thank you.

Senator PROXMIRE. Thank you very much, Mr. Trott. You're obviously an extraordinarily able and intelligent witness and I appreciate your testimony very much.

Although, as you know, we are most disappointed in the failure of the Justice Department to act, this hearing has developed information that has added to the questions previously raised about the *General Dynamics* case and about wrongdoing in Navy shipbuilding. Today's testimony raises new questions in my mind about the adequacy of the false claims law and the accountability of the Justice Department. I intend to follow up these matters with additional hearings in the fall. General Dynamics and others will be invited to testify.

Mr. TROTT. Thank you, Senator, for this opportunty. I would say that I'm somewhat disappointed, also, because I would like very much to be in a position where we can share more information with you. It's simply not possible in some respects and for that I apologize.

Senator PROXMIRE. Thank you very much, Mr. Trott.

The subcommittee will stand adjourned.

[Whereupon, at 11:20 a.m., the subcommittee adjourned, subject to the call of the Chair.]

NAVY SHIPBUILDING PROBLEMS AT GENERAL DYNAMICS

WEDNESDAY, OCTOBER 31, 1984

CONGRESS OF THE UNITED STATES,
SUBCOMMITTEE ON INTERNATIONAL TRADE, FINANCE,
AND SECURITY ECONOMICS OF THE
JOINT ECONOMIC COMMITTEE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room SD-106, Dirksen Senate Office Building, Hon. William Proxmire (vice chairman of the subcommittee) presiding.

Present: Senators Proxmire and Grassley.

Also present: James K. Galbraith, deputy director, and Richard F. Kaufman, general counsel.

OPENING STATEMENT OF SENATOR PROXMIRE, VICE CHAIRMAN

Senator PROXMIRE. The subcommittee will come to order.

First, I want to welcome Senator Grassley, who is joining us today at my request and who has begun his own inquiry into the handling of the Navy shipbuilding claims cases.

The Joint Economic Committee's interest in defense contracting dates back several decades. We held our first hearing on shipbuilding claims in 1969, 15 years ago, and in the mid-1970's began looking at the General Dynamics claim and several others involving large sums of money.

The referral of these cases to the Justice Department for investigation caused us to suspend our own inquiries pending the outcome of the criminal investigations. This turned out to be a long suspension as the Justice Department took 3½ to nearly 5 years reviewing each case. The effect was a blackout of public information about the subject. The termination of the cases without prosecution came as a surprise to knowledgeable persons in the Navy and elsewhere.

We reopened our inquiry early this year. We did that after we learned about the public allegations by P. Takis Veliotis against General Dynamics. Veliotis, a fugitive from justice, has accused General Dynamics of falsifying claims for which the Navy paid more than $600 million.

It was a logical extension of our inquiry to review the Justice Department's handling of the original investigations and the entire class of cases involving alleged false claims. It was equally logical for Senator Grassley's Subcommittee on Administrative Practice

and Procedure of the Judiciary Committee to exercise its oversight responsibilities in this area.

WITHHOLDING OF INFORMATION BY THE JUSTICE DEPARTMENT

One of the disturbing features of the case has been the reluctance of Justice to provide Congress with information about any of its investigations. After we released some of the Justice Department's documents in the Newport News case, and after Senator Grassley's subcommittee issued a subpoena to Justice, Justice provided us with some of the records in that case and the Lockheed case. But it is still withholding some records in those cases and it is withholding all the General Dynamics records on grounds that it has been reopened.

The reopening of the General Dynamics case is a curious thing. Earlier this year, I wrote to Justice suggesting the case be reopened. It wrote back saying there was no basis for reopening it. On July 24, I met with Stephen Trott, Assistant Attorney General, and I asked Mr. Trott whether the case had been reopened. He said Justice was "actively considering" whether to reopen it.

At our July 26 hearing, Mr. Trott did not say the case had been reopened. In response to questions about the original General Dynamics investigation, which was closed in 1981, he said: "Well, the only parts of the case that I really cannot discuss are those parts that are enshrouded in the secrecy of rule 6(e) of the Federal Rules of Criminal Procedure." Now that rule prohibits disclosure of grand jury material. He also declined to answer questions about the deliberative processes within the Justice Department. The first I heard that the case had been reopened was in a letter from Mr. Trott to Senator Grassley and myself responding to a request for copies of the records in the case. That letter was dated September 7, 1984, a couple months ago.

One aspect of our inquiry involves a request to the General Accounting Office to do an assessment of the Justice Department's management of the shipbuilding cases. Justice has so far refused to give GAO access to its files, but it has provided some information about the cases. Justice also made public an internal review of some of the investigations, including the General Dynamics case. Based on this information, the subcommittee staff, Mr. Kaufman specifically, has prepared a brief review of some aspects of the Justice Department's handling of the General Dynamics case, which will be presented after Senator Grassley makes his opening statement. After Mr. Kaufman finishes, this will be followed by Mr. James Hamilton, former assistant chief counsel of the Senate Watergate Committee. Mr. Hamilton is now a private attorney and has written widely on the subject of congressional access to executive branch materials.

This will be followed by testimony from the Justice Department. I'm delighted to see that they are present. I wasn't sure they would be, but they are here.

Now I am happy to call on my colleague, Senator Grassley.

OPENING STATEMENT OF SENATOR GRASSLEY

Senator GRASSLEY. Thank you, Senator Proxmire, for inviting the Subcommittee on Administrative Practice and Procedure to participate in your hearing today.

Since the Judiciary subcommittee began to seek information from the Justice Department on August 9, it quite frankly has been greeted with arrogance and resistance. This reaction by Justice seems to be typical when you compare it with two recent cases, those of the EPA and the Interior Department, both well-documented cases.

This subcommittee has asked for nothing but information, information necessary for the exercise of our constitutional obligation of oversight. We tried hard and diligently to avoid the embarrassment associated with extraordinary enforcement procedures. The record will bear this out. We have engaged in discussion and shown a willingness to cooperate and to compromise. We have twice delayed enforcement in good faith, but now we have come to the end of the rope. Delay and discussions have to give way eventually to action.

WHY THE SENATE SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE BEGAN AN INQUIRY

The subcommittee's initial inquiry into this matter stems from several events: First, the Justice Department's internal review of its Navy shipbuilding claims investigation. That review was self-critical of the management of the investigations' inadequacy of the relevant criminal statutes. The subcommittee has legitimate oversight of the Department of Justice and jurisdiction over the statutes involved.

Second, allegations appearing in press accounts made by former General Dynamics official Takis Veliotis; and finally, the July hearings chaired by you, Senator Proxmire, in which some allegations by Veliotis were corroborated through General Dynamics documents and a JEC subcommittee staff review.

The subcommittee's further interest in this matter is the pattern of lengthy Department of Justice investigations which have failed to produce indictments. These cases involve hundreds of millions of tax dollars.

Records of the Newport News case show sharp conflict between the attorneys closest to the investigation which recommended indictments and the attorneys in the main Justice office who eventually decided to drop these investigations without indictment.

In light of these facts, the Congress and the public have a right and also a very great need to examine the practice and procedure of their Justice Department with regard to such cases. Reform, such as those indicated by Justice in its own review, may very well be necessary. The Justice Department has failed to bring forth any of the records involving General Dynamics despite subcommittee requests, our pleadings, other good-faith efforts, subpoenas, and now the threat of contempt proceedings.

JUSTICE DEPARTMENT REFUSED COMPROMISE ON DISCLOSURE

The final attempt at compromise was made yesterday by this subcommittee in offering an understanding for access to General

Dynamics files. This access procedure is similar to agreements engaged in with Congress by this same Justice Department. Furthermore, it would meet all of the Department of Justice's concerns about the need for secrecy. Nonetheless, Justice has apparently declined to entertain any compromise.

The only rationale given the subcommittee by Justice is one of "our policy" is the way they put it. It is their policy to avoid disclosure of information from open investigating files. But case history dispels this concern as valid in light of any legitimate request from Congress. Of course, I feel common sense also dispels this concern. The Congress routinely honors sensitive material in its day-to-day business. It's almost a part of our everyday life. Any conjecture to the contrary on the part of Justice is both arbitrary and gratuitous.

WHITE HOUSE GOT INVOLVED

The White House, by its own initiative, became involved in our request and persuaded this subcommittee in talking personally to me to postpone action on contempt. White House officials requested a 2-week delay to review General Dynamics' records for possible executive privilege. That request for delay came to me on October 1. Now it's 4 weeks later and no legal privilege has been asserted by this White House.

I think the record is clear and well documented. It is a record weighted heavily in our favor in the constitutional pursuit of our duties. It is the case of Congress' legitimate legal obligation versus mere policy on the part of the Justice Department.

Senator PROXMIRE. I'm going to ask Mr. Kaufman, on behalf of staff, to take the witness position for a very few minutes. He has a short statement of three pages. Go right ahead, Mr. Kaufman.

STATEMENT OF RICHARD F. KAUFMAN, GENERAL COUNSEL, JOINT ECONOMIC COMMITTEE

Mr. KAUFMAN. Thank you, Senator Proxmire and Senator Grassley.

You will recall, Senator Proxmire, that you asked the General Accounting Office to do a management evaluation of the handling by the Justice Department of its shipbuilding investigations. As a result of that request, the GAO has obtained some information from the Justice Department, as have your committee and Senator Grassley's committee.

On the basis of information that both we and the General Accounting Office have received, we were able to develop a flowchart which is behind you. This flowchart was prepared by the GAO and it indicates two things. First, the actions that were taken in the investigation of the Electric Boat Division of General Dynamics beginning with the initial referral of the case by the Navy to the Justice Department in 1978 through the closing of the case by the Justice Department in 1981.

It also indicates in the lines below that the assignment of attorneys to the investigation and the reassignment of attorneys from the investigation.

ACTIONS TAKEN IN THE INVESTIGATION OF GENERAL DYNAMICS

Now looking at the actions taken in the case, the significant disclosures made so far have to do with recommendations by Government attorneys assigned to the case by the Justice Department and FBI agents about prosecution or nonprosecution in this case.

For example, in July 1980, one of the attorneys assigned to the case submitted a report recommending an indictment. In October 1980, a second memorandum recommending prosecution was submitted to the Justice Department by the same or a different attorney assigned to the case. The information indicates that other memorandums were forwarded to the Justice Department dealing with the question of whether to prosecute or not, but we do not yet know what the actual recommendations were in those recommendations.

For example, in February 1981, there was a presentation by an investigative task force in the Fraud Section of the Justice Department but it is not known what the investigative task force recommended.

In June 1981, one of the attorneys prepared what has been described to us as a "prosecution memorandum" to the chief of the Fraud Section. Again, it's not known at this time whether this memorandum recommended for or against prosecution.

However, in November 1981, the FBI submitted a statement or a report to the Justice Department recommending that the Electric Boat Division of General Dynamics and two individuals be indicted. Of course, the case was formally terminated the following month, in December 1981.

Senator PROXMIRE. Say that again. You say that the FBI recommended an indictment in November and the following month the case was terminated by the Justice Department?

Mr. KAUFMAN. Yes, sir; that is what the information indicates. This is information that's been forwarded to us by the Justice Department. I want to stress, however, that the Justice Department has not allowed GAO to have access to its files, to the records in the case or to any of the documents, so that GAO has been unable to audit or verify any of the information presented to us. The only facts we have are what the Justice Department has presented to GAO or to this committee in summary form.

Senator PROXMIRE. But this is new information for the Congress, at least for the subcommittee, the two recommendations of indictment and a recommendation also by the FBI; is that right?

Mr. KAUFMAN. That's correct, Senator.

Senator PROXMIRE. For the indictment of Electric Boat in the case of the FBI and two individuals?

Mr. KAUFMAN. Yes, sir.

THE ASSIGNMENT OF ATTORNEYS TO THE CASE

The remaining portion of the flowchart shows the assignment of attorneys to the case and what the information shows is that a number of people were assigned to the case in supervisory, investigative, and prosecution capacities. The key information as far as we can determine at the present time is the assignment of the full-time attorneys to the case as line attorneys or case attorneys work-

ing in the field as prosecuting investigators, and those assignments are indicated by the red marks. The marks above that line represent assignments to the case and the marks below the line represent decisions to take the persons off the case.

The flowchart shows that the first full-time attorney was assigned to the case in August 1978, 6 months after the case was first referred to the Justice Department by the Navy. This attorney was taken off the case 9 months later in April 1979.

The following month, May 1979, a new full-time attorney was assigned. This particular turnover is puzzling, Senator, because if you look at the line at the bottom of the flowchart which represents assignment of investigators, you can see there was a buildup of FBI agents assigned to the case during the period just preceding the time when the first attorney was removed from the case. He would have been familiar with the files and the investigative reports prepared by the FBI during that period. He may have participated in interviews taken. Of course, when he left the case at that time, whatever knowledge or information he had would have been lost to the investigation.

The new full-time attorney remained on the case until it was terminated in 1981. Indeed, he was the only full-time case attorney in the investigation throughout the remainder of the inquiry except for a 6-month period in 1980 when he was joined by another case attorney. This second individual was assigned in May 1980 and then removed from the case in October 1980.

Thus, for 40 of the 46 months that the investigation lasted, there was only one 6-month period in 1980 when there was as many as two full-time attorneys on the case. During the remainder of the investigation, which is to say most of it or almost all of it, there was no more than a single attorney assigned to the case. Of course, there were others involved. As I indicated, there were supervisors and the Navy attorney was a joint team and there were part-time attorneys. Here, too, however, there was considerable turnover which could not have strengthened the investigation.

For example, a single Navy attorney joined the case in January 1979, left it a few months later in May 1979, and was not replaced by any other Navy attorney, according to this information.

There was a part-time attorney assigned to the case in November 1979—I'm sorry—he was assigned to the case in 1978 and he was taken off the case in November 1979 and was replaced by another part-timer the first month.

That concludes my statement, Senator.

[The prepared statement of Mr. Kaufman, together with the attached flowcharts referred to, follows:]

PREPARED STATEMENT OF RICHARD F. KAUFMAN

"DEPARTMENT OF JUSTICE
ACTIONS AND ATTORNEY ASSIGNMENTS
IN THE GENERAL DYNAMICS INVESTIGATION"

A STAFF STATEMENT

PRESENTED TO THE

SUBCOMMITTEE ON INTERNATIONAL TRADE,
FINANCE, AND SECURITY ECONOMICS

OF THE

JOINT ECONOMIC COMMITTEE

October 31, 1984

A review of the information obtained by this Subcommittee from the Department of Justice indicates that there were at least three memoranda prepared by government attorneys and FBI agents recommending indictment and prosecution in the General Dynamics case, and that there were greater deficiencies in the staffing and management of the investigation than has been acknowledged by the Department. Because the Justice Department has withheld access to its records, including the prosecution memoranda, the reasoning, legal theories, and facts in support of the recommendations are not known. Nor do we know the arguments used against the recommendations. In addition, the lack of access to Justice Department records has made it impossible to verify the facts about the staff assigned to the investigation or about staff turnover as described by the Department.

The General Accounting Office, in response to a request by Senator Proxmire, has also requested access to the Department's files in order to evaluate the management of the investigation of the

Electric Boat Division of General Dynamics and other Navy shipbuilders. The Justice Department supplied GAO with summaries of its investigations, but has not allowed GAO to examine its files or interview attorneys and FBI agents who worked on the cases.

The attached flow charts were prepared by GAO mostly from information supplied by the Justice Department. Again, this is unaudited and unverified data. It shows the case actions, and attorneys and investigators assigned to the Electric Boat investigation. The first action was the referral of the case by the Navy to Justice in February 1978. In March 1979, a special Grand Jury was impaneled. Beginning in November 1979, a series of FBI and prosecutor reports were submitted to the Justice Department. We do not know what was recommended by all of these reports, but we do know some of the recommendations.

For example, in July 1980, one of the attorneys assigned to the case submitted a report recommending an indictment. In October 1980, a second memorandum recommending prosecution was submitted, presumably by one of the attorneys. In February 1981, a presentation was made by the investigative task force to the Fraud Section of the Justice Department. It is not now known what this presentation recommended. In June of 1981, one of the attorneys prepared a "prosecution memorandum" to the Chief of the Fraud Section. It is not known if this memorandum recommended for or against prosecution. However, in November 1981, the FBI submitted a recommendation that Electric Boat and two individuals be indicted. The case was formally terminated the next month.

The next line shows the assignments of attorneys. The entries above the line indicate when attorneys were assigned to the case; entries below the line show when they were taken off the case. The entries are coded for supervisors, case attorneys (sometimes referred to as line attorneys), part-time attorneys, and Navy attorneys. The first supervisor was assigned in March 1978. In the same month, a part-time attorney was assigned. A second supervisor was assigned one month later. It is not known whether the supervisors were concerned exclusively with General Dynamics or if they had other cases to supervise. It is reasonable to speculate that they supervised more than one case.

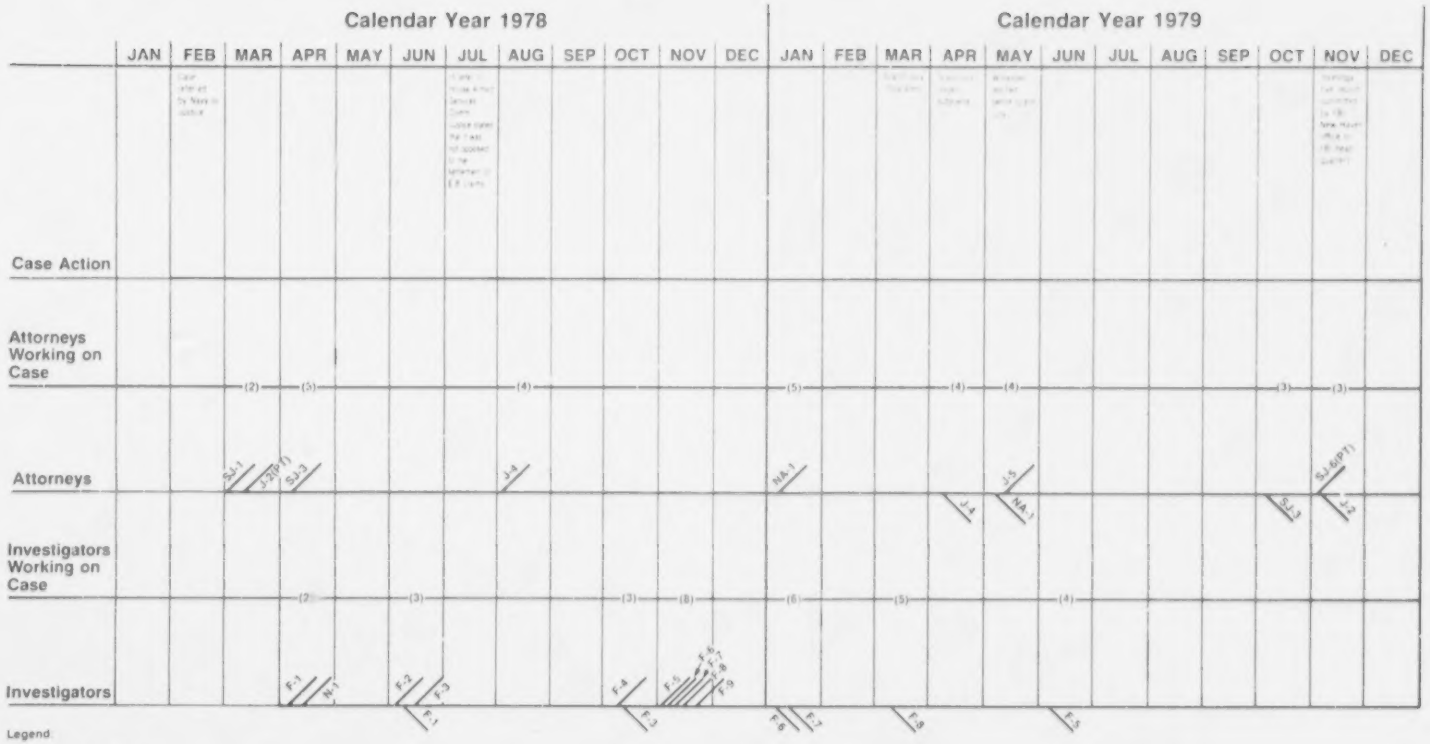
The most significant fact about the assignment of attorneys concerns the number of full-time attorneys assigned to the investigation and their turnover. The full-time case attorneys are marked in red on the flow chart. The first full-time attorney (J-4) was assigned in August 1978, six months after the case was referred by the Navy. This attorney was taken off the case nine months later in April 1979. The following month, May 1979, a new full-time attorney was assigned (J-5). This turnover is puzzling because most of the FBI investigation appears to have been done while the first attorney was on the case. But his knowledge was lost to the investigation once he left.

The new full-time attorney remained on the case until it was terminated. Indeed, he was the only full-time case attorney throughout all of the remainder of the investigation except for a six-month period in 1980 when he was joined by another case attorney. This latter individual was assigned in May 1980 and removed from the case in October 1980.

Thus, there was no more than one full-time attorney assigned during 40 of the 46 months that the investigation lasted. Only during six-months of 1980 were there as many as two full-time attorneys on the case.

Of course, others were involved. As I indicated, there were supervisors, a Navy attorney, and part-time attorneys. Here too there was considerable turnover which could not have strengthened the investigation. For example, a single Navy attorney joined the case in January 1979, left it in May 1979, and was not replaced. The first part-time attorney left in November 1979 and was replaced by another part-timer the same month.

Electric Boat

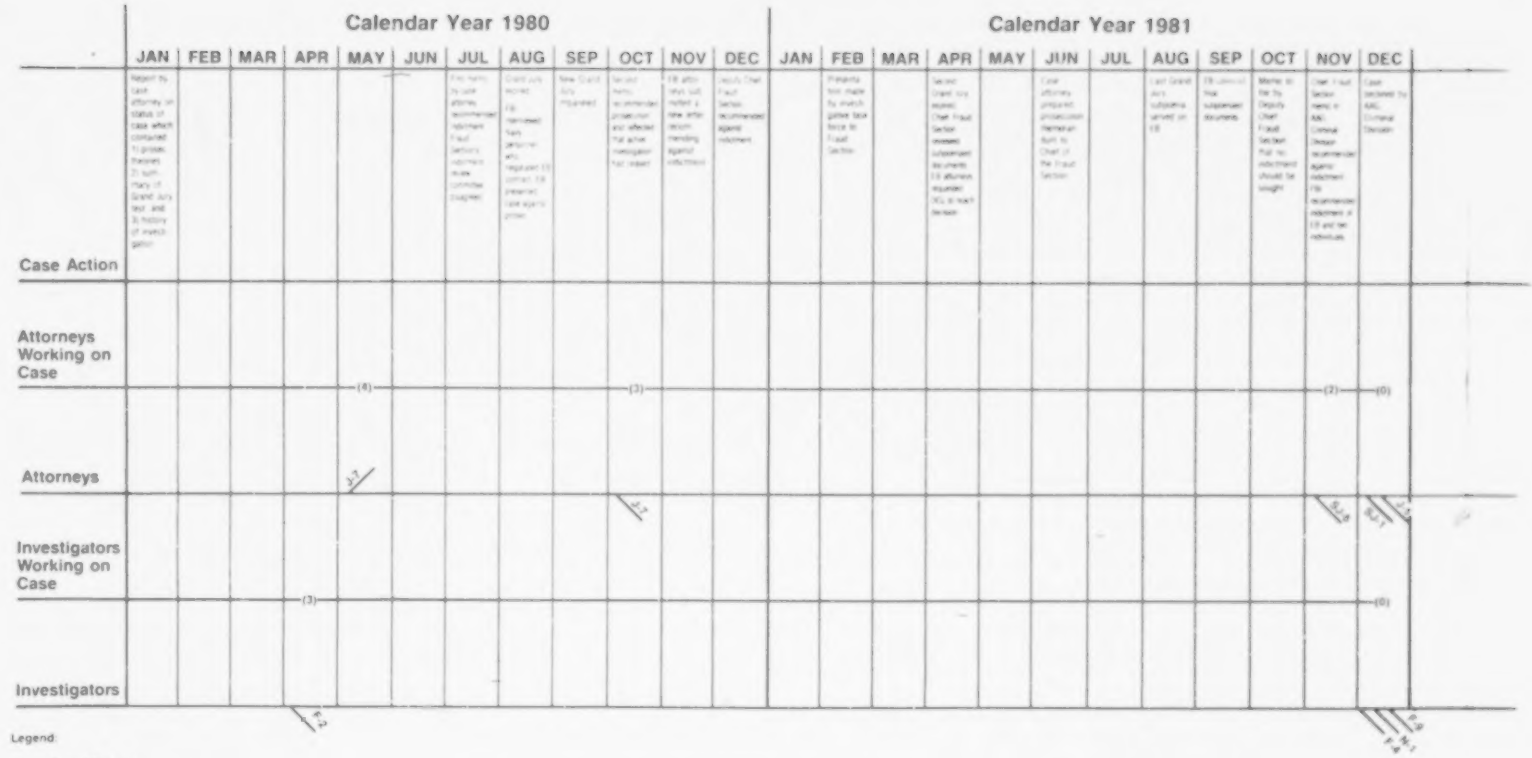

Calendar Year 1978
Calendar Year 1979
JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
Case Action
Attorneys Working on Case
(2) (5) (4) (5) (4) (4) (3) (3)
Attorneys
SJ-1 J-3(PT) SJ-3 J-4 NA-1 J-5 NA-1 SJ-3 SJ-4(PT) J-2
Investigators Working on Case
(2) (3) (3) (8) (6) (5) (4)
Investigators
F-1 N-1 F-2 F-3 F-4 F-5 F-6 F-7 F-8 F-9 F-1 F-2 F-6 F-7 F-9 F-3

Legend:

F — FBI Agent
J — DOJ attorney
N — Navy investigator
NA — Navy attorney
PT — Part-time
S — Supervisor

NOTE Entries above the line indicate when people were assigned to the investigation and entries below the line indicate when people were released from the investigation.

Electric Boat



Senator PROXMIRE. Let me ask you just a very few questions on this. In the first place, you have spent a lot of time working on this case, Mr. Kaufman. You're the general counsel of the Joint Economic Committee. You are a lawyer yourself.

Was the lack of consistent staffing by Justice a deliberate policy, in your judgment, or simple mismanagement? Is there any way you can tell?

Mr. KAUFMAN. Senator, there is no way you can tell. One can agree, however, that there is considerable evidence that this investigation was not properly managed, that it was not adequately staffed, and I think the Justice Department itself concedes that much.

The reason you can't make a specific judgment in any qualitative term in comparison, for example, with other investigations, is, first, the Justice Department is withholding information about the case from both GAO and Congress. So there is no way to dig into it and to get all the facts at the present time in order to understand the full dimensions of exactly what happened during this investigation and how the Justice Department handled it.

Second, in talking with examiners in the General Accounting Office, I am informed that this is a common practice, that as far as GAO is concerned they are unable themselves to make qualitative judgments or comparisons about management of various cases in terms of the number of attorneys and staff assigned to the cases because the Justice Department does not keep records in a way which would allow the General Accounting Office to go in and examine the files and understand how the staffing decisions were made, what resources were allocated in each case, and whether they were adequate or not. So at the present time, there is just not enough information.

Senator PROXMIRE. Now the Justice Department provided Senator Grassley's subcommittee with an inventory of records in the General Dynamics case and they requested that the inventory be kept confidential. Did any of the information in your prepared statement come from that document or any other confidential source?

Mr. KAUFMAN. No, sir; none of the information came from the inventory provided to Senator Grassley and the information provided to the General Accounting Office was not provided in a confidential form and much of it has already been made public in an internal review of the management of the investigation by the Justice Department which the Justice Department completed a year ago.

Senator PROXMIRE. Can you say whether the number of attorneys assigned to the General Dynamics investigation was average or below average for these kinds of investigations, other large criminal investigations? It seems like a very, very small assignment—one full-time attorney in a case that involved $600 million of the taxpayers' money. But what's your judgment?

Mr. KAUFMAN. Senator, the only basis we have so far for making a comparison is with the Newport News investigation. We have some information there as a result of the subpoena issued by Senator Grassley's subcommittee and other sources of information.

We have been able to understand something about the management of the Newport News shipbuilding claims investigation and the interesting thing there is that that investigation occurred in two stages. In the first stage, a single U.S. attorney was assigned to the case as the case or field or line attorney, and after his investigation which lasted some year or two, he recommended that there be no prosecution. However, the U.S. attorney's office whom that individual worked for rejected that recommendation and decided to set up a second team to take another look at that case, and that second team consisted or three full-time case attorneys. Those three full-time case attorneys went over the case, did some additional investigation, and they concluded that there was sufficient evidence of criminal activity in the Newport News case to warrant an indictment and prosecution and they made very strong recommendations to the Justice Department along those lines.

So that's the only case we have for comparison, where three U.S. attorneys were assigned in a case involving similar types of facts, a Navy shipbuilding claim, and similar large amounts of money.

As I indicated a few moments ago, we don't have enough information to be able to understand just how the Justice Department makes decisions about the number of attorneys or what resources, staff or otherwise, to allocate to any individual case that it has before it.

Senator PROXMIRE. I have one final question. Do you know whether it's usual or unusual for two memorandums to be submitted recommending prosecution and for the FBI to recommend prosecution in a case such as this one, and then for the case to be terminated despite such recommendations by those in the field who did the investigation?

Mr. KAUFMAN. Senator, I have no way of judging that for the same reason. We just don't have enough information about the management of Justice Department investigations to make an informed judgment in response to such questions.

Senator PROXMIRE. Thank you. Senator Grassley.

Senator GRASSLEY. Just in the way of summary, you're saying that throughout the entire period of this investigation that there was only one full-time investigator except for a short period of time there was one other person put into it—I shouldn't say investigator—I meant to say attorney—one full-time attorney except for a period of time he had the help of a second one. Is that true?

Mr. KAUFMAN. Yes, sir; there were other attorneys involved in the case, but they were in a supervisory capacity. There were two supervisors in the main Justice Department who were assigned to the case. One of those supervisors was later taken off the case. But as far as full-time attorneys in the field doing the investigating, working up a case, preparing it and making recommendations, you're correct; there was just one except for that brief period in 1980.

Senator GRASSLEY. That was over how long a period of time again?

Mr. KAUFMAN. The full investigation lasted 46 months, just short of 4 years.

Senator GRASSLEY. Now we know that there's a tremendous amount of documentation, a vast amount, that was involved here.

Do you know if there was adequate and proper number of technical and backup staff to help the attorney-investigator?

Mr. KAUFMAN. We have no way of knowing, Senator. There were quite a number of FBI agents assigned to the case early in the investigation, but then they began leaving the case as well, and by sometime in 1980 there were only a very few investigators on the case. There were only three FBI investigators from the period of April 1980 through the rest of the case. At one time there were as many as eight FBI investigators. That was during the peak period around November 1978 and then there was a falling off of the number of FBI people assigned to the case.

Senator GRASSLEY. I have no further questions.

Senator PROXMIRE. Thank you very much, Mr. Kaufman.

Now we are delighted to have as our first witness, Mr. James Hamilton, former assistant chief counsel to the Senate Watergate Committee and now a private attorney who's written widely on the subject of executive branch privilege.

STATEMENT OF JAMES HAMILTON, FORMER ASSISTANT CHIEF COUNSEL, SENATE WATERGATE COMMITTEE

Mr. HAMILTON. Senator Proxmire and Senator Grassley, you have asked me to discuss a controversy that has developed between the Subcommittee on Administrative Practice and Procedure and the Department of Justice regarding compliance with a subpoena issued October 19 to the Attorney General.

I have had prior occasion to consider the issue of congressional access to executive branch materials. As you mentioned, Senator Proxmire, I was assistant chief counsel to the Senate Watergate Committee and recently was special counsel to the House subcommittee investigating the transfer of Carter briefing books and other Carter administration materials to the 1980 Reagan-Bush campaign.

As will become apparent, these experiences are relevant to my testimony this morning. As you also mentioned, I have written in this field.

Let me begin by setting for the present issue as I understand it. On October 19, the Administrative Practice and Procedure Subcommittee issued a subpoena to the Attorney General. The subpoena related to the subcommittee's review of the Justice Department's conduct in investigating allegedly false shipbuilding claims against the Navy by several entities, including the Electric Boat Division of General Dynamics Corp. The subpoena called for documents and files regarding the investigation at that time.

The Department has declined to produce such materials. Recently, the Associate Attorney General, Lowell Jensen, stated, in a letter to Senator Grassley, that:

> It is the longstanding position of this Department that all investigative reports, prosecutive reports, and memoranda and other files, exhibits and documents, relating to an open grand jury investigation are confidential documents of the executive department of the Government.

Mr. Jensen added that—

> The information called for in your subpoena falls squarely into the category of materials whose confidentiality must be preserved if this Department is to perform

the duties imposed upon the executive branch of Government by the Constitution to "take care that the laws be faithfully executed.* * *"

Mr. Jensen stated that the matter has been submitted to the President for determination as to whether he should exert executive privilege. As far as I know, the President has not yet made a determination on this issue.

Mr. Jensen also contended that a substantial portion of the subpoenaed documents could not be produced because of the restrictions found in rule 6(e) of the Federal Rules of Criminal Procedure. I understand that the subcommittee agrees that grand jury materials covered by rule 6(e) should not be produced.

Thus, the principal issue for discussion today is whether the stated Justice Department policy or a claim of executive privilege would protect records found in open investigatory files that are not grand jury materials protected by rule 6(e).

My purpose here this morning is threefold. First, to describe for you the state of the law regarding this issue; second, to provide certain historical information as to the Department's practices that may be relevant; and third, to discuss with you certain practical considerations regarding enforcement of the committee's subpoena to the Attorney General.

What I am not prepared to do is discuss in any detail the facts relating to the *General Dynamics* case and the Departments' handling of it, since I have not had adequate time to review those matters.

THE STATE OF THE LAW REGARDING CONGRESSIONAL ACCESS TO EXECUTIVE BRANCH MATERIALS

There are certain general legal principles that are relevant here and I should mention that my prepared statement will provide the citations to the cases that I refer to.

The Constitution gives Congress the power to conduct legislative investigations. As Chief Justice Earl Warren observed in *Watkins* v. *United States*, that power is broad and it encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of effects on our social, economic, or political system for the purpose of enabling Congress to do this. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency, or waste.

In similar fashion, Justice John Harlan stated that the scope of the power of inquiry is as penetrating and far reaching as the potential power to enact and appropriate under the Constitution.

Congress has authority to investigate criminal conduct and the Justice Department investigations of and prosecution decisions about such conduct. An important opinion confirming Congress' investigatory power in these regards is *McGrain* v. *Daugherty*, which arose out of the *Teapot Dome* scandal. The Supreme Court there confirmed the Senate's authority to investigate the alleged failure of the Attorney General to prosecute persons who had violated the antitrust laws of the United States.

The cases indicate that Congress may pursue its investigations of criminal conduct even when indictments are pending. In *Hutchinson* v. *United States*, the court said, "Surely, a congressional com-

mittee which is engaged in a legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might potentially be harmful to a witness in some distant proceeding * * * or when crime or wrongdoing is disclosed."

The Department of Justice, however, evidently contends that Congress' ability to investigate criminal conduct does not include the right to obtain the Department's open files. Other Attorneys General have taken similar positions. For example, a 1956 order to the Justice Department, Attorney General Browell stated, "If the request concerns an open case, that is, one as to which litigation or administrative action is pending or contemplated, the file may not be available for examination by the committee's representatives."

There is, however, no court decision allowing the Department of Justice to withhold records from the Congress merely because those records are found in open Department files. There are cases that recognizes the Government's privilege to withhold investigatory files from private parties, but this of course is a different issue.

The case from the *Watergate* era is instructive. Judge Sirica of the U.S. District Court for the District of Columbia allowed the Watergate grand jury to send a report to the House Judiciary Committee that was considering President Nixon's impeachment. The report, which contained grand jury materials relating in part to open cases, was sent to the House over the objection of several defendants whose indictments were pending before the court. The Court of Appeals later affirmed Judge Sirica's ruling. A more recent case decided in 1981 provided wiretap information to the Senate Ethics Committee over the objections of a defendant under Federal indictment.

I should also mention that exemption b(7) of the Freedom of Information Act allows the withholding of investigatory materials from the general public in certain circumstances. The act, however, specifically states that its provisions are not authority for withholding information from Congress.

HISTORICAL INFORMATION ON JUSTICE DEPARTMENT PRACTICES

Despite Mr. Jensen's statement, the Justice Department's practices regarding production to Congress of records of open investigatory files have not been adhered to. A recent report by the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce provides several examples where the Department of Justice has given materials from open enforcement files to Congress. This happened, for example, during the *Teapot Dome* scandal when documents were provided to the Senate Select Committee to Investigate the Department of Justice.

According to the subcommittee, the Department also provided documents from open files in 1979 during an investigation of white-collar crime in the oil industry by the Subcommittee on Energy and Power of the House Committee on Interstate and Foreign Commerce.

Furthermore, during the Senate Watergate Committee's investigation, FBI interview summaries from the initial investigation of the Watergate break-in were made available to the committee's

chief counsel and minority counsel even though the investigation of crimes by Nixon administration officials was not completed.

Most recently, during the Carter briefing materials investigation, I was allowed as special counsel for the investigative subcommittee to examine virtually all FBI interview summaries regarding that matter, even though the Department's investigation was still open. The Department also gave the subcommittee all documents it collected during its investigation. The subcommittee's access came after President Reagan specifically ordered the Department to cooperate with the subcommittee. The details of the access arrangement which provided certain protections to the Department were embodied in an August 11, 1983, letter from Associate Attorney General Lowell Jensen to me as special counsel and I am providing the subcommittee with a copy of that letter which, by the way, is a public document.

It is thus clear that the Department's practices regarding access to open investigatory files do not always support the policy announced by Mr. Jensen in his October 19 letter to Senator Grassley.

CONSIDERATIONS REGARDING ENFORCEMENT OF THE COMMITTEE'S SUBPOENA

This being said, a question remains as to how a court in a contempt of Congress proceeding would resolve the claim of executive privilege over the records requested, if such an assertion is indeed made by the President. To my view, a court likely would engage in a balancing process, weighing the subcommittee's need for the records it sought against the Department's interest in nondisclosure.

The subcommittee's position would be that the Senate has a constitutional right to investigate the Justice Department's investigation and handling of the *General Dynamics* case. Moreover, the Legislative Reorganization Act specifically provides that each standing committee of the Senate and the House of Representatives shall review and study, on a continuing basis, the application, administration, and execution of those laws, or parts of laws, the subject matter of which is within the jurisdiction of that committee.

Clearly, the Department's handling of the *General Dynamics* case is within the jurisdiction of the Judiciary Committee and within the jurisdiction of the Administrative Practice and Procedure Subcommittee.

The defendant in any contempt proceeding would assert, as Mr. Jensen has done in his October 19 letter to Senator Grassley, that release to the subcommittee would impair the constitutional and statutory rights of persons under investigation and could present an appearance of a potential for pressure on the part of the Department of Justice attorneys assigned to the case.

A problem with Mr. Jensen's argument is that it assumes that the subcommittee will act improperly, that its members would either release information to the public and the media without concern for constitutional rights or will exert undue pressure on the Department of Justice attorneys to prosecute or refrain from pros-

ecution. But a court should not, and likely would not, assume that such unfortunate scenarios would occur. To the contrary, courts making information available to Congress have specifically observed that they must assume that the Congress, which after all is part of the Federal Government, will act with regularity and propriety.

Moreover, in the present situation, there are no opinion cases that might be prejudiced by publicity and, in any event, a court would have various mechanisms to mitigate the effect of adverse pretrial publicity.

Mr. Jensen asserts that confidentiality must be preserved so that the executive branch can fulfill its constitutional duty to take care that the laws be faithfully executed. Certain court decisions, however, indicate that the law enforcement privilege is not constitutionally based but rests instead on pragmatic common law. One could argue that Congress' constitutional right to information outweighs the claim of privilege based on nonconstitutional grounds.

There are other factors that a court might well consider. First, the court might want to know whether the subcommittee is willing to enter into a confidentiality agreement with the Department. Such an agreement, for example, might provide that General Dynamics records will be received in executive session, handled in a confidential fashion, kept in a secure area, and not be made public until after consultation with the Department.

Second, a court might be interested in whether all the records accumulated during the initial General Dynamics investigation are involved in the reopened investigation or whether the current inquiry concerns only a limited portion of the records originally amassed I have, of course, no knowledge as to the facts in this regard.

Another possible issue is whether the reopened investigation may have a suspect purpose, such as providing the Department with a reason to assert privilege and thus to protect records that are embarrassing because they reveal malfeasance or ineptness. Now I certainly do not suggest that this is so, but raise it only as an issue that a court might consider in appropriate circumstances.

Since all of the facts are not yet known, it is difficult to venture an opinion as to how a court would resolve the issue. However, it is fair to say that in the context of a contempt prosecution of a prominent Justice Department official a court undoubtedly would pay close attention to any executive privilege he claimed, since to reject the claim might mean a prison term or fine. The court also might be sympathetic to a defendant who acted, to his peril, under the President's instructions.

Nonetheless, a strong argument can be made that a subcommittee willing to take appropriate steps to protect the confidentiality of the information should be granted access to certain open investigatory files. A court should not hold that open investigatory files are never available to the Congress since such a ruling could be used to hide official wrongdoing.

Let me close if I may with several practical observations. I note that the Administrative Practice and Procedure Subcommittee has given Senator Grassley enforcement power during the recess period and that the subcommittee staff has asked whether a contempt ci-

tation could be sent to the President or the President pro tem of the Senate without a full vote of the Judiciary Committee. I agree with the recent opinion of the Senate legal counsel, Michael Davidson, that it would be improper to attempt to bypass the full committee during adjournment. I believe that the court, if the matter proceeded that far, would look askance at such an action.

Furthermore, despite the wording of the contempt statute, the case law indicates that during a recess a contempt citation could not be certified to the U.S. attorney unless the President of the Senate or the President pro tem independently determines that certification is warranted. I think the subcommittee can judge much better than I whether Vice President Bush or Senator Thurmond would make this determination or would take other actions such as defer the matter until the entire Senate returns.

Finally, it should be noted that if a contempt citation against the Attorney General or other high Department of Justice officials eventually is certified by the Senate, the Ethics in Government Act might require the appointment of an independent counsel to handle the case.

The act requires the appointment of an independent counsel where there is specific evidence that a crime which is not a Federal offense has been committed by an official designated by the act. Contempt of Congress is not a Federal offense as that term is used in the act's legislative history. The Attorney General and his principal assistants are persons covered by the act and a contempt citation certified by the full Senate should be considered specific credible evidence that a Federal crime has been committed.

Senator Proxmire and Senator Grassley, I hope these views are useful to you in determining how to proceed, and I would be happy to answer any questions you might have.

[The prepared statement of Mr. Hamilton, together with the letter referred to, follows:]

PREPARED STATEMENT OF JAMES HAMILTON

Mr. Chairman and Senator Grassley:

My name is James Hamilton and I am a Washington attorney.*/ You have asked me to discuss a controversy that has developed between the Subcommittee on Administrative Practice and Procedure and the Department of Justice regarding compliance with a subpoena issued on October 19 to the Attorney General.

I have had prior occasion to consider the issue of Congressional access to Executive Branch materials. I was Assistant Chief Counsel to the Senate Watergate Committee and recently was Special Counsel to the House subcommittee investigating the transfer of Carter debate briefing books and other Carter Administration materials to the 1980 Reagan-Bush

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*/ Member, Ginsburg, Feldman and Bress, Chartered.

Campaign. As will become apparent, these experiences are relevant to my testimony this morning. I have also written a book and various articles that deal with Congressional access to Executive Branch materials,*/ and have testified before Congressional committees on that subject.**/

Let me begin by setting forth the present issue as I understand it.

On October 19 the Administrative Practice and Procedure Subcommittee issued a subpoena to the

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*/ E.g., The Power to Probe: A Study of Congressional Investigation, Random House 1976, Vintage Books 1977 at pp. 156-207; A Legislative Proposal For Resolving Executive Privilege Disputes Precipitated by Congressional Subpoenas, 21 Harvard Journal on Legislation 145 (Winter 1984) (with John C. Grabow).

**/ E.g., Testimony Concerning Executive Privilege during "Contempt of Congress" Hearing before the Subcommittee on Oversight and Investigations of the House Energy and Commerce Committee, Serial No. 89, 97th Congress, November 19, 1981.

Attorney General. The subpoena related to the Sub-committee's review of the Justice Department's conduct in investigating allegedly false ship building claims against the Navy by several entities, including the Electric Boat Division of General Dynamics Corporation. The subpoena called for various documents from Department files regarding the investigation of that company.

The Department has declined to produce such materials. Recently, the Associate Attorney General, Lowell Jensen, stated in a letter to Senator Grassley that "[i]t is the long-standing position of this Department that all investigative reports, prosecutive reports and memoranda, and other files, exhibits and documents that relate to an open grand jury investigation

are confidential documents of the executive department of the Government." (Emphasis added.)

Mr. Jensen added that "[t]he information and documents called for in your subpoena fall squarely into the category of materials whose confidentiality must be preserved if this Department is to perform the duty imposed upon the executive branch of Government by the Constitution to 'take Care that the Laws be faithfully executed....'"

Mr. Jensen stated that the matter has been submitted to the President for a determination as to whether he should assert Executive Privilege. As far as I know, the President has not yet made a determination on this issue.

Mr. Jensen also contended that a substantial portion of the subpoenaed documents could not be produced because of the restrictions found in Rule 6(e) of the Federal Rules of Criminal Procedure. I understand that the Subcommittee agrees that grand jury materials covered by Rule 6(e) should not be produced.

Thus, the principal issue for discussion today is whether the stated Justice Department policy, or a claim of Executive Privilege, would protect records found in open investigatory files that are not grand jury materials protected by Rule 6(e).

My purpose here today is threefold:

1. To describe for you the state of the law regarding this issue;

2. To provide certain historical information as to the Department's practices that may be relevant; and

3. To discuss with you certain practical considerations regarding enforcement of the Subcommittee's subpoena to the Attorney General.

What I am not prepared to do is to discuss in any detail the facts relating to the General Dynamics case and the Department's handling of it, since I have not had adequate time to review these matters.

There are certain general legal principles that are relevant here.

The Constitution gives Congress the power to conduct legislative investigations. As Chief

Justice Earl Warren observed in Watkins v. United States:*/

> That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste.

Similarly, Justice John Harlan has stated that "the scope of the power of inquiry . . . is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution."**/

The Congress has authority to investigate criminal conduct and the Justice Department's

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*/ 354 U.S. 178, 187 (1957).

**/ Barenblatt v. United States, 360 U.S. 109, 111 (1959).

investigations of, and prosecution decisions about, criminal conduct. An important opinion confirming Congress' investigatory power in these regards is McGrain v. Daugherty,*/ which arose out of the Teapot Dome scandal. The Supreme Court there confirmed the Senate's authority to investigate the alleged failure of the Attorney General to prosecute persons who had violated the antitrust laws and defrauded the United States.**/

The cases indicate that Congress may pursue its investigations of criminal conduct even when indictments are pending. In Hutcheson v. United States,***/

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*/ 273 U.S. 135, 174 (1927).

**/ See also Sinclair v. United States, 279 U.S. 263 (1929).

***/ 369 U.S. 599 (1962).

the Court said:

> [S]urely a Congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might potentially be harmful to a witness in some distinct proceeding . . . or when crime or wrongdoing is disclosed.*/

The Department of Justice, however, evidently contends that Congress' ability to investigate criminal conduct does not include the right to obtain the Department's open files. Other Attorneys General have taken similar positions. For example, in a 1956 order to the Justice Department, Attorney General Brownell stated:

> If the request concerns an open case, i.e., one [as to] which litigation or administrative action is pending or

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*/ See also Delaney v. United States, 199 F.2d 107 (1st Cir. 1952).

contemplated, the file may not be available for examination by the committee's representatives.*/

There is, however, no court decision allowing the Department of Justice to withhold records from the Congress merely because they are found in open Department files.**/ There are cases that recognize a government privilege to withhold investigatory files from private parties, but this, of course, is a different issue.***/

A case from the Watergate era is instructive. Judge Sirica allowed the Watergate grand jury to send a report to the House Judiciary Committee that was

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*/ Department of Justice Order No. 116-56, May 15, 1956.

**/ See Investigation of the Environmental Protection Agency, Report on the President's Claim of Executive Privilege Over EPA Documents, Abuses In The Superfund Program, and Other Matters, House Comm. on Energy and Commerce, Subcomm. on Oversight and Investigations, Committee Print 98-AA, 98th Cong., 2d Sess. 81 (1984).

***/ E.g., Association for Women in Science v. Califano, 566 F.2d 339, 343 (D.C. Cir. 1977); Black v. Sheraton Corp., 564 F.2d 531, 542 (D.C. Cir. 1977).

considering President Nixon's impeachment. The report which contained grand jury materials relating in part to open cases, was sent to the House over the objection of several defendants whose indictments were pending before the court.*/ The Court of Appeals upheld this ruling.

A more recent case provided wiretap information to the Senate Ethics Committee over the objection of a defendant under federal indictment.**/

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*/ In re Report and Recommendation of June 5, 1972 Grand Jury Concerning Transmission of Evidence To The House of Representatives, 370 F. Supp. 1219 (D.D.C. 1974), petitions denied, Haldeman v. Sirica, 501 F.2d 714 (D.C. Cir. 1974). Compare In re Grand Jury Impanelled October 2, 1978, 510 F. Supp. 112 (D. D.C. 1981)

**/ United States v. Dorfman, Crim. Case No. 81-CR-269 (N.D. Ill. 1981) reprinted in Committee Print, Court Proceedings and Actions of Vital Interest to the Congress, House Judiciary Comm., 97th Cong., 2d Sess. 407, 411 (1982).

I should also mention that Exemption b(7) of the Freedom of Information Act allows the withholding of investigatory materials from the general public in certain circumstances.* The Act, however, specifically states that its provisions are not authority for withholding information from Congress.**

Despite Mr. Jensen's statement, the Justice Department's practices regarding production to Congress of records from open investigatory files have not been uniform. A recent report by the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce provides several examples where the Department

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* 5 U.S.C. § 552(b)(7).

** 5 U.S.C. § 552(c).

of Justice has given materials from open enforcement files to Congress. This happened, for example, during the Teapot Dome scandal when documents were provided to the Senate Select Committee to Investigate the Department of Justice. According to the Subcommittee, the Department also provided documents from open files in 1979 during an investigation of white-collar crime in the oil industry by the Subcommittee on Energy and Power of the House Committee on Interstate and Foreign Commerce.*/

Moreover, during the Senate Watergate Committee's investigation, FBI interview summaries from the initial investigation of the Watergate break-in were made available to the committee's chief

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*/ Investigation of the Environmental Protection Agency, Report on the President's Claim of Executive Privilege Over EPA Documents, Abuses In The Superfund Program, And Other Matters, House Comm. on Energy and Commerce, Subcomm. on Oversight and Investigations, Committee Print 98-AA, 98th Cong., 2d Sess. 58-68 (1984). The Subcommittee's report also describes the production to Congress of information from sensitive, open investigatory files by other agencies besides the Department of Justice.

counsel and minority Counsel even though the investigation of crimes by Nixon Administration officials was not completed.

Most recently, during the Carter briefing materials investigation, I was allowed, as Special Counsel for the investigating subcommittee, to examine virtually all FBI interview summaries regarding that matter even though the Department's investigation was still open. The Department also gave the Subcommittee all documents it collected during its investigation. The Subcommittee's access came after President Reagan specifically ordered the Department to cooperate with the Subcommittee. The details of the access arrangement, which provided certain protections to the Department, were embodied in an August 17, 1983

letter from Associate Attorney General Lowell Jensen to me as Special Counsel. I am providing this Subcommittee with a copy of that letter.*/

It is thus clear that the Department's practices regarding access to open investigatory files do not always comport with the policy announced by Mr. Jensen in his October 19 letter to Senator Grassley.

This being said, a question remains as to how a court, in a contempt of Congress proceeding, would resolve a claim of Executive Privilege over the records requested, if such an assertion is indeed made by the President. In my view a court likely would engage in a balancing process, weighing the Subcommittee's need for the records sought against the Department's interest

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*/ A copy is attached to this statement.

in non-disclosure.*/

The Subcommittee's position would be that the Senate has a constitutional right to investigate the Justice Department's investigation and handling of the General Dynamics case. Moreover, the Legislative Reorganization Act specifically provides that "each standing committee of the Senate and the House of Representatives shall review and study, on a continuing basis, the application, administration, and execution of those laws, or parts of laws, the subject matter of which is within the jurisdiction of that committee."**/

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*/ Compare, e.g., United States v. Nixon, 418 U.S. 683 (1974); United States v. American Tel. & Tel. Co., 419 F. Supp. 454 (D. D.C. 1976), remanded, 551 F.2d 384 (D. C. Cir.), decision withheld, 567 F.2d 121 (D. C. Cir. 1977); Nixon v. Sirica, 487 F.2d 700, 717 (D. C. Cir. 1973); Sun Oil Co. v. United States, 514 F.2d 1020 (Ct. Cl. 1975).

**/ 2 U.S.C. § 190d(a).

Clearly, the Department's handling of the General Dynamics case is within the jurisdiction of the Judiciary Committee and the Administrative Practice and Procedure Subcommittee.

The defendant in the proceeding would assert, as Mr. Jensen has done in his October 19 letter to Senator Grassley, that release to the Subcommittee could impair the constitutional and statutory rights of persons under investigation, and could present the appearance of, and the potential for, pressure on Department of Justice attorneys assigned to the case.

A problem with Mr. Jensen's argument is that it assumes that the Subcommittee will act improperly -- that its Members will either release information to the public and the media without concern for constitutional rights, or will exer'

undue pressure on the Department of Justice attorneys to prosecute or refrain from prosecution. But a court should not, and likely would not, assume that such unfortunate scenarios would occur. To the contrary, courts making information available to Congress have specifically observed that they must assume that the Congress, which after all is part of the federal government, will act with regularity and propriety.*/

Moreover, in the present situation there are no pending cases that might be prejudiced by publicity and in any event a court would have various mechanisms -- for example, extensive voir dire or postponements -- to mitigate the effect of adverse pretrial publicity.**/

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*/ E.g., Exxon Corp. v. Federal Trade Commission, 589 F.2d 582 (D.C. Cir. 1978), cert. denied, 441 U.S. 943 (1979); Ashland Oil, Inc. v. Federal Trade Commission, 409 F. Supp. 297, 308 (D. D.C. 1976), aff'd, 548 F.2d 977, 979 (D.C. Cir. 1976); Ansara v. Eastland, 442 F.2d 751, 754 (D.C. Cir. 1974); In Re Grand Jury Investigation of Uranium Industry, 1979-2 Trade Cases ¶62,792 at 78,644 (D. D.C. 1979); In re Report and Recommendation of June 5, 1972 Grand Jury Concerning Transmission of Evidence to The House of Representatives, 370 F. Supp. 1219, 1230 (D. D.C. 1974), petitions denied, Haldeman v. Sirica, 501 F.2d 714 (D.C. Cir. 1974).

**/ See generally, The Power to Probe, supra at 135-151.

Mr. Jensen asserts that confidentiality must be preserved so that the Executive Branch can fulfill its constitutional duty to "take Care that the Laws be faithfully executed ...." Certain court decisions, however, indicate that the law enforcement privilege is not constitutionally based, but rests instead upon pragmatics and common law.*/ One could argue that Congress' constitutional right to information outweighs a claim of privilege based on non-constitutional grounds.

There are other factors that a court might well consider.

1. A court might want to know whether the Subcommittee is willing to enter into a confidentiality

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*/ Association for Women in Science v. Califano, 566 F.2d 339 (D.C. Cir. 1977); Black v. Sheraton Corp., 564 F.2d 531 (D.C. Cir. 1977).

agreement with the Department. Such an agreement, for example, might provide that General Dynamics records will be received in executive session, handled in a confidential fashion, kept in a secure area, and not be made public until after consultation with the Department.*/

2. A court might be interested in whether all the records accummulated during the initial General Dynamics investigation are involved in the reopened investigation or whether the current inquiry concerns only a limited portion of the records originally amassed. I have, of course, no knowledge as to the facts in this regard.

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*/ Compare the 1983 letter from Lowell Jensen regarding the Carter briefing materials investigation cited above.

3. Another possible issue is whether the reopened investigation may have a suspect purpose, such as providing the Department with a reason to assert privilege and thus to protect records that are embarrassing because they reveal malfeasance or ineptness. I certainly do not suggest that this is so, but raise it only as an issue that a court might consider in appropriate circumstances.

Since all of the facts are not yet known, it is difficult to venture an opinion as to how a court would resolve the issue. However, it is fair to say that, in the context of a contempt prosecution of a prominent Justice Department official, a court undoubtedly would pay close attention to an Executive Privilege claim, since to reject the claim might mean a prison term

or fine. The court also might be sympathetic to a defendant who acted, to his peril, on the President's instructions.

Nonetheless, a strong argument can be made that a Subcommittee, willing to take appropriate steps to protect the confidentiality of information, should be granted access to certain open investigatory files. A court should not hold that open investigatory files are never available to the Congress, since such a ruling could be used to hide official wrongdoing.

Let me close with several practical observations. I note that the Administrative Practice and Procedure Subcommittee has given Senator Grassley "enforcement power" during the recess period and that the Subcommittee's staff has asked whether a contempt

citation could be sent to the President or President pro tem of the Senate without a vote of the full Judiciary Committee. I agree with the October 26, 1984 opinion of Senate Legal Counsel Michael Davidson that it would be improper to attempt to bypass the full Committee during the adjournment. I believe that a court, if the matter proceeded that far, would look askance at such an action.*/

Furthermore, despite the wording of the contempt statute,**/ the case law indicates that, during a recess, a contempt citation could not be certified to the U.S. Attorney unless the President of the Senate, or the President pro tem, independently determines that

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*/ Wilson v. United States, supra.

**/ 2 U.S.C. § 194.

certification is warranted.*/ The Subcommittee can judge better than I whether Vice-President Bush or Senator Thurmond would make this determination or would take other action such as deferring the matter until the entire Senate returns.

Finally, it should be noted that, if a contempt citation against the Attorney General or other high Department of Justice officials eventually is certified by the Senate, the Ethics in Government Act**/ likely would require the appointment of an Independent Counsel to handle the case.

That Act requires the appointment of an Independent Counsel where there is specific evidence

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*/ See Wilson v. United States, 369 F.2d 198 (D.C. Cir. 1966).

**/ 28 U.S.C. §§ 591 et seq.

that a crime, which is not a petty offense, has been committed by an official designated by the Act. Contempt of Congress is not a petty offense as that term is used in the Act's legislative history.*/ The Attorney General and his principal assistants are persons covered by the Act. And a contempt citation certified by the full Senate should be considered specific, credible evidence that a federal crime has been committed.**/

Mr. Chairman and Senator Grassley, I hope these views are useful to you in determining how to proceed in obtaining records from the Department of Justice. I will be happy to answer any questions you may have.

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*/ S. Rept. 95-170, 95th Cong., 2d Sess., 52 (1978).

**/ However, if the Attorney General decided not to apply for the appointment of an Independent Counsel because he believed Executive Privilege constituted a valid defense, his determination would not be reviewable. Banzhaf v. Smith, 737 F.2d 1167 (D. C. Cir. 1984).

U.S. Department of Justice

Office of the Associate Attorney General

The Associate Attorney General

Washington, D.C. 20530

August 11, 1983

James Hamilton, Esquire
Special Counsel
Human Resources Subcommittee
Ginsburg, Feldman and Bress
1700 Pennsylvania Avenue, NW.
Washington, D. C. 20006

Dear Mr. Hamilton:

Set forth below is the understanding reached between the Department of Justice ("Department") and the Human Resources Subcommittee of the House of Representatives ("Subcommittee") concerning the exchange of information between the Department and the Subcommittee regarding our respective investigations of allegations involving the unauthorized transfer of Carter Administration documents and information to the Reagan-Bush presidential campaign and attendant matters.

(1) The Department will provide the Subcommittee all documents from the Hoover Institution identified by the FBI as relevant to its investigation. These documents will be provided as soon as the FBI completes any follow-up investigation occasioned by these documents which will be on an expedited basis. This understanding is independent of any other arrangement the Subcommittee may make for review of Hoover Institution documents.

(2) The Subcommittee can review all video tapes in the Department's possession of President Reagan's practice sessions for his debates with President Carter.

(3) The Department promptly will provide the Subcommittee all documents provided by the White House to the Department regarding this matter after any follow-up FBI interviews occasioned by those documents are completed. The Department anticipates that any such follow-up interviews will be conducted expeditiously, and that all such documents will be available prior to completion of the entire FBI investigation. To accommodate the interests of the Subcommittee, prior to the completion of the follow-up investigation on this entire class of documents, the Department promptly will make available to the Subcommittee on a periodic basis those documents upon which the

FBI has completed its assessment and any follow-up investigative activity.

(4) In a manner that will maintain the integrity of the criminal investigative process and the privacy concerns of the document source, the Department promptly will provide the Subcommittee on a periodic basis those documents gathered by the FBI during the course of its investigation upon which the FBI has completed its assessment and any follow-up investigative activity. The Department anticipates that any such assessment and investigative activity will be pursued expeditiously.

(5) Consistent with longstanding Department policy, the Subcommittee will not be given FBI interview summaries (302's) prepared in connection with this investigation. At the conclusion of the FBI's investigation, the Department will promptly provide the Subcommittee with the content of each individual 302.

(6) The Department understands that the Subcommittee will disclose to the Department documents and any other information gathered during the Subcommittee's inquiry which may be relevant to the Department's investigation; we understand any such disclosure will be accomplished expeditiously consistent with the integrity of the Subcommittee's inquiry.

(7) The Department understands that the Subcommittee and/or its staff will not publicly release or use in public session any documents or portions thereof obtained from the Department without first providing the Department with reasonable notice and opportunity for consultation.

We believe the above points accurately state the understanding between the Department and the Subcommittee regarding this matter. We trust the Subcommittee appreciates the Department's need to maintain the integrity of our criminal investigation regarding this matter as we recognize the Subcommittee's interest in maintaining the integrity of its inquiry. Consistent with the need to maintain the integrity of our investigation, the Department will, on a cooperative and expeditious basis, provide the Subcommittee documents and information in its possession that the Subcommittee believes may be of assistance to its inquiry.

Sincerely,

D. Lowell Jensen
Associate Attorney General

Senator PROXMIRE. Thank you very much, Mr. Hamilton. Your testimony has been very, very helpful to us and I have a couple questions and perhaps Senator Grassley has, but when we finish our questions I hope you will stay around while the Justice Department witnesses testify so that in the event that we want to follow up their testimony with questions of you, you would be available.

Mr. HAMILTON. Certainly.

Senator PROXMIRE. Now as I understand your testimony, you're saying that no court case has ruled that a congressional committee cannot have Justice Department documents because they pertain to an open criminal investigation. Is that correct?

Mr. HAMILTON. That's correct.

Senator PROXMIRE. You say that this administration's policy and the policies of previous administrations of not providing Congress with materials from open investigatory files has not been implemented in a uniform way.

Mr. HAMILTON. That's correct. There are instances where material from open investigatory files has been provided to Congress.

Senator PROXMIRE. And how does this inconsistency affect the legal weight of their argument, in your opinion?

Mr. HAMILTON. Well, I think the legal position is always better when it has been adhered with some regularity.

Senator PROXMIRE. Better, but the fact that they sometimes provide it and sometimes don't suggests to me that if it's a legitimate request on the part of the Congress that the burden should lie with them as to why they don't provide it and go further than just to say it's their policy. Is that right?

Mr. HAMILTON. Well, I think in a court proceeding, Senator Proxmire, you would have a balancing test of the Congress' need against the interest for confidentiality that the Department of Justice had. I think if the Congress takes steps to assure that information will be treated in a confidential and thoughtful fashion that the balance tips toward the Congress.

Senator PROXMIRE. Let me ask that question in a little different way. One Justice Department argument is that if the material in an open case were given to Congress it would have a chilling effect on witnesses who in the future might be reluctant to deal on a confidential basis with prosecutors.

Have you come across that argument before and how do you evaluate it?

Mr. HAMILTON. Well, I have come across it before. This is a position that the Justice Department has asserted in other occasions. I think that we have to assume that the Congress will handle material in an appropriate fashion. Obviously, we know in the past there have been leaks out of this body as there have been leaks out of the House of Representatives, but I think that Congressmen and Senators are of course officials of the U.S. Government and they have a constitutional responsibility to fulfill, and I think the assumption must be that Senators and Representatives will act in an appropriate fashion. In other words, we cannot assume that there's going to be wholesale release or disclosure of information and we cannot assume that a Senator is going to unduly pressure a prosecutor to indict or not to indict.

Senator PROXMIRE. General Counsel Kaufman has some followup questions.

Mr. KAUFMAN. Mr. Hamilton, one aspect of the argument used by the Justice Department against turning over of documents in an open case is not that Congress will leak the information to the public, but rather that the mere turning over of such information to Congress will discourage future witnesses from cooperating with prosecutors and in that sense will have a chilling effect on individuals who Justice Department investigators and prosecutors seek to obtain information from.

I wonder if that is an argument that you have encountered in your experience so far?

Mr. HAMILTON. Yes, I have encountered it. Two, whether or not that's applicable, I think that question would be better addressed to a psychologist because I'm sure different witnesses will react in different ways. Third, even if that is the case, the Congress still has the constitutional authority to inquire into the administration of the Department of Justice and that indeed is going to happen and I think it's a risk that we perhaps have to take.

Senator PROXMIRE. Senator Grassley.

Senator GRASSLEY. First of all, I understand that you have extensive background in this area and I appreciate that very much and your expertise is very helpful to us and I want to thank you for coming here today. I had some questions that Senator Proxmire has already asked, but I also have some others as well.

First of all, I'd like to state that just in case you aren't aware of it that yesterday a confidentiality compromise offer was made by this subcommittee to DOJ. In light of that, can you again comment on how this affects our ongoing effort to gain access or how the courts might see that?

Mr. HAMILTON. Well, I think any court ruling on this issue would be impressed by the fact that the Senate has offered confidential treatment for the records in question. I would refer you again to the letter from Mr. Jensen to me during the investigation of the briefing book matter because there an agreement was reached which provided substantial protections for the Department of Justice. The production to some degree was staggered. We agreed to consult before we released any information. Provisions of that sort were in the agreement. I think the Justice Department went a ways to reach that agreement and I think the subcommittee went a ways, but we reached a compromise that eventually worked out and I would think that this type of compromise is what Congress can strive to.

Senator GRASSLEY. So in the case you referred to they allowed you to delve into the open files?

Mr. HAMILTON. That's correct.

Senator GRASSLEY. While the White House was willing to get involved in this matter about 1 month ago when they asked me for a 2-week delay, apparently they don't wish to involve themselves at this point when we asked them, as we did, to come forward and testify about their activities related to our efforts to obtain this information.

While obviously you cannot speak for the White House or for the President, and I wouldn't ask you to do that, I would like to ask

your opinion on how long a period of time you think is appropriate for the President to review documents in order that he make a decision regarding whether to invoke Executive privilege. For the record, I would also like to state that they asked us for a 2-week delay and we are here now since October 19, 2 weeks further down the road, so in effect there's been a 4-week delay.

Mr. HAMILTON. The President has a very competent counsel, Mr. Fred Fielding, and I'm sure that Mr. Fielding in this matter could move expeditiously to advise the President.

Senator GRASSLEY. OK. I think the point of my question was as much time as anything else. Is the 4 weeks adequate or the 2 weeks originally adequate that they asked for?

Mr. HAMILTON. Senator, I don't know what else is on Mr. Fielding's schedule or what else is on the President's schedule. I imagine before next Tuesday they have a good bit to do. But I would think this matter is not very complicated and could be reviewed fairly quickly.

Senator GRASSLEY. If the current investigation of the Department of Justice was focused on matters other than the claims considered in the first investigation—that is, if what is now being investigated is totally separate and perhaps a later act by company official or officials—would it be valid for the Department to maintain that disclosure of records from the original closed investigation would somehow impede the current investigation?

Mr. HAMILTON. On the facts as you state them, I would say no.

Senator GRASSLEY. I'd like to ask you a question that I asked Department of Justice officials yesterday. Do you know of any instances where DOJ attorneys have discussed reopening a case for the purpose of shielding information from Congress?

Mr. HAMILTON. Senator Grassley, the answer to that is no, to my knowledge. We have all read recent stories in the newspapers, but I don't know whether those stories are correct or not.

Senator GRASSLEY. Associate General Lowell Jensen's answer was that such has never been the case and would never be the case. I am not implying that is the case in the type of case we have here because I have no evidence to that effect and I want to make that perfectly clear.

I'd just like to ask you hypothetically what you might consider as indications beyond some sort of absolute proof that shielding information would be the motive behind the reopening of a criminal investigation. For example, would it be evidence toward the theory that it was shown that there was little or no activity on the ongoing investigation?

Mr. HAMILTON. That's a very difficult question for me to answer. Obviously, there are a number of facts that could suggest that improper conduct has taken place. I think you would have to look at the entire factual context before you could make that judgment. I think I should say in regard to Mr. Jensen, I certainly found him to be a man of integrity.

Senator GRASSLEY. Well, we would all agree that while, obviously, intentional shielding of information would be a contemptuous act, would you anticipate the Department if such a situation transpired would face even more serious charges?

Mr. HAMILTON. Well, there are a number of statutes that protect the right of Congress to receive information and make criminal certain actions to block the Congress from receiving information. We've got perjury statutes. We've got false statements statutes. We've got obstruction of justice statutes. I would think that concerted action to obstruct a congressional proceeding would be a very serious matter and might have to be looked at by authorities, yes.

Senator PROXMIRE. Thank you very, very much, sir, and we would appreciate it if you would be able to stay, Mr. Hamilton, for testimony from the Justice Department.

Now I understand the Justice Department is here. And, Mr. Trott, will you be the witness for the Justice Department this morning?

Mr. TROTT. Yes, Senator, I will.

Senator PROXMIRE. We're delighted to have you. This is the third time, I guess, that you've appeared before this subcommittee and you're an old friend.

Mr. Trott, do you have any statement you would like to make?

STATEMENT OF STEPHEN S. TROTT, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. TROTT. Yes, very briefly, I would, Senator. With your permission I may be standing up.

Senator PROXMIRE. You may stand or sit. I know you have a back problem and we appreciate that, whatever makes you most comfortable.

Mr. TROTT. First, Senator, in view of what has been said, let me simply begin by indicating that we are pleased to be here this morning. Even though this is not a Subcommittee on Administrative Practice and Procedure hearing, we are delighted to be able to be here to accommodate you in your interest in this case. Frankly, I'm distressed that we somehow seem to be at odds. I think we both have a legitimate interest in the subject matter that you are looking into, specifically referring to Electric Boat and General Dynamics, but I think that our respective responsibilities under the law of the Constitution at this juncture make it difficult for us to cooperate with what's going on.

Let me indicate in that respect to make it clear that the Justice Department's position on the records that you seek with respect to Electric Boat and General Dynamics have been promised to you at the conclusion of what we consider to be an open investigation. So with all due respect, we see this not as an issue of withholding information from Congress that Congress says that it needs. We see this simply as a request by the executive branch of Government to you to recognize the serious institutional requirements that we must live up to to faithfully execute the law and simply to delay the information you require until after the information can be made available to you consistent with our obligations.

Let me jump to another point just touched on by Senator Grassley and made rather well by Mr. Hamilton. That is, I would completely agree with you that it would not only be reprehensible for any lawyer in the Justice Department, including myself, to phony

up a grand jury investigation to prevent Congress from having access to information that it needs, but it would be a prima facie violation of a number of Federal criminal statutes. There is no issue on that and I would stipulate to that in case the subcommittee is concerned about that factor in the case.

So at the risk of repeating myself, again we see this not as a question of us refusing to give you information. As we have stated a number of times, we are more than willing to do in the Electric Boat and General Dynamics case exactly what we have done in the Newport News and Lockheed case, and that is when the cases become finally closed we can turn over this information to you consistent with our obligations and we can and we shall do so. Your obvious question to that is how long will this take, and I don't know because we are in the evidence gathering phase.

Second, this raises the question of whether or not this is an open investigation. I can tell you, yes, it is an open investigation. I remain, however, disunable by rule 6(e)—that's sort of becoming the evil Halloween witch in this whole procedure—from describing to you the precise parameters of our investigation.

It is absolutely clear that the cases—and Mr. Hamilton is familiar with them and I'm delighted with his assistance—that it would be a violation of rule 6(e) for us to lay out for you in detail precisely what it is that we are investigating, which includes the grand jury mode. As I said to you earlier, in that respect, when a case is being reopened on a different but similar basis, I am precluded by law from being able to give you a full view of what it is that we are now doing. It is in that context that we have to be somewhat hazy about this simply because the law indicates that that must be the case.

Senator PROXMIRE. Mr. Trott, we fully understand that and we are not asking you to set forth in detail your situation here.

Mr. TROTT. Thank you, Senator.

Senator PROXMIRE. What we are asking for, as you know, is specific information which we feel would in no way compromise you.

Mr. TROTT. I realize that, Senator, but there's been a question raised whether or not we are misleading this subcommittee. In other words, when we have an old case and we have a new case, it's difficult for me to explain what we are doing because of 6(e), but I can tell you as I have that all the information, in the judgment of the career lawyers now working on this case and in my judgment also, is germane to what we are doing. To go beyond that would get close to the rule of secrecy that I have talked about and I hope you can appreciate that.

THE NUMBER OF LAWYERS WORKING ON THE CASE IS SUFFICIENT

Second, there's been a suggestion made in this subcommittee that somehow the sheer numbers of lawyers working on a case is somehow evidence of whether or not the case has been or is being aggressively pursued. Mr. Kaufman noted quite accurately that one is incapable in the current state of information of jumping to those conclusions and I suggest that before this subcommittee you do not have a sufficiently mature viable basis of information from which to draw any conclusions in that respect. I have been trying cases

for 20 years and as I was listening to that I was sitting back there thinking and only once during the 20 years that I have tried cases has there been anything other than a first chair lawyer in a massive investigation or prosecution.

However, I do think that the chart and the documents that Mr. Kaufman referred to will indicate that there were more than just one lawyer working on this case.

I'm reminded of an old saying of the Texas Rangers and that is one riot, one ranger. That is a way of saying that we respond with what is appropriate. It's quite possible that before we're through with our open investigation right now the sheer numbers of lawyers might be few, but I suggest that it's quality and not quantity that counts and I can guarantee you that this part of the investigation of which I am in charge is going to be appropriately staffed with both lawyers and investigators to make sure again—this is a phrase that I keep repeating—that our obligation to faithfully execute the law is carried out.

JUSTICE DEPARTMENT'S POLICY IS CONSISTENT

Mr. Hamilton referred to a couple of instances where the Department of Justice may not, in the view of some, strictly adhere to the policy that's been presented to you of not wishing to share open files with anybody, including the Senate. I would just add a couple of additional facts with regard to the other subcommittee, and that was that that situation was never regarded by the Justice Department as a grand jury criminal investigation. The Senator will remember that the final conclusions were in that case that never at any time did we have specific credible information indicating the commission of a crime. That's what we really call an inquiry and I hope you don't think I'm dancing on semantics. I think if you will review the record you will find that that situation in kind was substantially different from the situation we are dealing with here and in fact somewhat different in the dimensions in which it presented itself to both branches of Government, both the judiciary and the executive.

THE HISTORY OF EXECUTIVE PRIVILEGE

Now Mr. Hamilton touched also briefly on the history of the executive privilege in that respect and whether or not the Justice Department has shared information. I'm certainly not here to talk about executive privilege because I'm not an expert on that. As you know, that's a matter that's not in my hands. However, the history of this goes back some ways. The principal objections to release of portions of the General Dynamics Electric Boat files which are not required to be withheld under rule 6(e) relate to the obligation of the executive branch not to disclose internal information pertaining to an open investigation. Not only are the concerns of rule 6(e) heightened in a case which is currently before a grand jury, it's a case in which the grand jury is being used, but even if certain documents could be cleared for disclosure under rule 6(e), making open investigative files available to the Congress might jeopardize an ongoing criminal investigation and ultimately—and I would certainly

not suggest this here—interfere with our constitutional responsibilities under the law.

The policy of the executive branch throughout this Nation's history has been generally to decline to provide committees of Congress with access to or copies of open law enforcement files except in extraordinary circumstances.

Attorney General Robert Jackson, subsequently a Justice of the Supreme Court, stated this position over 40 years ago. "It is the position of this Department"—I'm quoting from the Attorney General in 1941, restated now with the approval of and the direction of the President—"that all investigative reports are confidential documents of the executive department of the Government to aid in the duty laid upon the President by the Constitution to take care that the laws be faithfully executed," and that congressional or public access to them would not be in the public interest. Disclosure of the reports could not do otherwise than seriously prejudice law enforcement with a defendant or a prospective defendant and be no greater help than to know how much or how little information the Government has and what witnesses or sources of information it can rely on. This is exactly what these reports are intended to contain.

In that respect, Mr. Hamilton appropriately pointed out that it would be improper to assume that Congress cannot take care of business in an appropriate way and we certainly don't make the assumption that that is the case and we would simply ask that you accord us the same courtesy of recognizing our legitimate interests.

This position was expostulated by Attorney General Jackson and is found throughout history. I have evidence here that as far back as the administration of President Washington and on through that this was considered to be an important principle of the executive branch of Government. President Tyler became involved in an issue in this very matter in 1843. In 1859, it was President Buchanan. In 1861, it was President Lincoln. In 1862, again President Lincoln. In 1908, Attorney General Bonaparte. Again in 1909, Attorney General Bonaparte. In 1912, Attorney General Wickersham. In 1914, Attorney General McReynolds. There have been substantial numbers of involvements both by Presidents and Attorneys General in attempting to protect the prerogative of the executive branch again to make sure that investigations go forward in an appropriate way.

So let me say that on that score that certainly if we look throughout our Nation's history we will find that there have been on occasions variations from this policy. I would ask you, as you have indicated that you will do, however, to view this case within its context and within its four corners that you realize that our statements to you as to what our views of the potential in the case are, are not made up to try to prevent you from getting information, but simply are asserted in order to enable us to proceed as we think we must.

SUPPLEMENTATION OF THE NEWPORT NEWS AND GENERAL DYNAMICS CASES

Now you addressed to me sometime back, October 15, a letter asking for supplementation in the Newport News and General Dy-

namics case. This was a letter of October 15, 1984, signed by both of you. You asked in that case that we supplement our submission with the following: First, all reports and memorandums prepared by the FBI, the Department of Navy, or any other agency common to the Lockheed and Newport News case. I am advised by my staff that to our knowledge we have given you all the information and all the reports that are in our possession that fall within these descriptions.

However, in order to make sure, I personally called the FBI and requested the FBI to check all its files in both Washington and in the field offices to make sure there's not something of this variety that's still there that we don't know about. That is being done and as promptly as the FBI reports back to us on that, if there is anything additional under the same guidelines we have been using on Newport News and Lockheed, we will turn it over to you, of course subject to 6(e) and that restriction.

Now with respect to documents in the Department of the Navy, again we believe that we have turned over to you all the documents that we have that somehow reflect the involvement of the Navy in those cases. As you know we have requested assistance from the Navy assigned to work as lawyers on those cases. In this respect—again, one more policy—if we did have documents that were Navy documents, we would respectfully not turn those over to you. We would ask you to turn to the Navy. So I would indicate to you that if you do believe that the Navy has something that you want on this, please ask the Navy for it because we don't have it and it's not our policy to go and become a conduit to the Navy on something like this.

I am also told that you asked, No. 3, for any letters, memorandums or other communications that resulted from our comment on the July 29, 1976, letter of Senator Proxmire's to Attorney General Levy requesting the review of the transcript of the Joint Economic Committee hearings and other evidence of sources of information to determine if the Newport News claim was based on fraud.

I am told that the Attorney General took his files with him, as does every Attorney General, and we do not have anything that fits into that category. Again, my staff has been asked to look through and see if there appears to have been anything in the 1970's sparked by your letter, Senator Proxmire. As of this date, we have found none.

Frankly, I'm somewhat at a loss to be able to determine what it is in this letter that you believe we have omitted when you say certain types of material were omitted. Certainly we consciously omitted nothing within your description in our transmission of information to you. If you have additional information on this, it is something that we may have omitted that you need, I would appreciate the opportunity to talk with your staff and try to figure out what that is. From the letter I am unable to do so.

I also want to report to you that with respect to our offer to file a lawsuit in the *Newport News* case that we did that. We were met somewhat surprisingly however by a court that said, well, there doesn't appear to be a real controversy here so why don't you make those decisions on your own. It's been my understanding in working with the task force that that has been recently refiled with the

Senate as a party and we look forward to trying to resolve those issues in that forum. This has been done. There is a matter now that ought to be pending but is not specifically pending. I've been told that there is a hearing that's been scheduled on that. We will continue to work cooperatively in that forum, again to try to determine what parts of that information may or may not pertain to rule 6(e).

Senator GRASSLEY. Does that surprise you that the court said that, because we discussed that the last time you were before the committee in regard to the *Vasco* case. We told you our view that there was ample precedent for what we were requesting the court had already issued and were really saying—I interpret the court as saying now that that issue has already been settled; there's really no controversy here.

Mr. TROTT. No, I was surprised because what was said at the court is we have some information that appears to us to be protected by rule 6(e), but in our desire to share information with the Senate you'd like to have the court's blessing on this in a sense in the determination that it is not. In our judgment and in the judgment of our lawyers, it is. The courts, the judiciary, control 6(e). It controls grand jury information. As I told you last time, I think it's in the interest of prudence and in the interest of the rights of people involved to get some determination. Now that the Senate has become involved in that matter, I am confident that there will at least be some variety of hearing maybe before a magistrate and this issue will be resolved.

Senator GRASSLEY. You want to go to court every time you reject something that Congress wants?

Mr. TROTT. No, and we didn't in most of these cases. We are simply saying that when we are confronted with a situation about 6(e) there may be some questions. Rather than just telling you it's 6(e), we are willing to go to the authority who has control over that information to try to get a determination from them that this can be given to you. We view this as simply a device to enable us to give you something in addition to what we already have that we are unsure of. We appreciate working with Senate counsel. He's been most helpful.

Beyond that, I simply make myself available to answer any questions.

Senator PROXMIRE. Thank you very much, Mr. Trott. Mr. Trott, I'm going to open with a very brief response to something that you raised in your statement and then I have some questions.

You indicated that you felt that one lawyer on the case who may not be a full-time lawyer may not be too small an assignment. This, of course, is a very complicated case involving $600 million of taxpayers' money and there was one lawyer, one case, no indictment. On the other side for General Dynamics, there were 3 law firms in 3 major cities—Chicago, Boston, and Washington, DC—we estimate there may be 10 to 25 lawyers on the case. And it just seems that while, as you say, quantity isn't everything, quality is important, but lawyers on the other side were also very well paid I'm sure, probably much better paid than the lawyers defending the Government and the taxpayers. So that kind of struck me as an interesting contrast.

Now I was told by you on July 24, that Justice was only actively considering whether it would reopen the General Dynamics investigation. When exactly did you decide to reopen it and were you accurate when you told me in July that it had not yet been formally reopened?

Mr. TROTT. Well, at the risk of a very long answer and repeating some of the ground that we've been over, as you know, Senator, we also discussed the emergence of Takis Veliotis over a year ago, September 1983. It was at that juncture, based on representations made to us by him, that we began the process to relook at this case. We went through a number of months of very delicate negotiations with Mr. Veliotis which are very germane to this hearing and in the spring we finally were able to arrive at a situation that enabled us to get the information we wanted and still protect the best interests of the Government.

It was shortly after that that we began, the investigators and lawyers, to talk with witnesses, including Mr. Veliotis, and we got access to some of the documentary information. In that respect, I guess I would have to defer to something that's already public and you know about it, the tape recordings Mr. Veliotis himself keeps talking about. It was based on an analysis then of that situation—and I can't give you the precise dates sitting here—I had a discussion with the Fraud Section people working on this case and they indicated we were going to go into a grand jury mode.

When that was in connection with me sitting here right now, I don't know precisely.

Senator PROXMIRE. Can you certify to this subcommittee that the decision to reopen the case was not made at least in part to shield the Justice Department from the request for the records from the case that had been closed in December 1981?

Mr. TROTT. Senator, if you put me under oath, I will do it under oath.

Senator PROXMIRE. What's that,

Mr. TROTT. I will do that under oath. I will so certify that that had no part at all in this determination. If you wish, I will do that under oath.

Senator PROXMIRE. What is the specific day that it was reopened?

Mr. TROTT. I don't know. I'd have to go back and reconstruct the date that I had the discussion with the Fraud Section lawyers. We'd have to go back to Connecticut when the grand jury began to develop evidence.

Senator PROXMIRE. Now I hold in my hand a paper, the New London Day. Its headline on Sunday, October 28—that was a couple of days ago. It says, "General Dynamics Grand Jury Cited by Justice Department May Not Exist." Then the subhead says, "Claim of sitting grand jury was used as reason for not complying in struggle over documents." And the lead, the first short paragraph, says:

> Although the U.S. Justice Department officials have cited an open grand jury investigation as justification for refusing to turn over documents to a Senate subcommittee, no Federal grand jury has as yet been empaneled specifically to hear evidence in the Government's probe of General Dynamics.

Now let me ask you, this paper having made this report, I wonder if you can tell us whether or not this is true or untrue?

Mr. TROTT. The suggestions, the facts, the implications in the article in that paper which I have read to the effect that somehow we are not investigating this case in a mode that utilizes the grand jury as an investigative tool are absolutely false.

Senator PROXMIRE. Well, in fairness to the paper, let me just say what they said. All they said was that:

> Although Justice Department officials have cited an open grand jury investigation as justification for refusing to turn over documents to a Senate subcommittee, no Federal grand jury has as yet been empaneled specifically to hear evidence in the Government's probe of General Dynamics.

That's what they say. Is that right or not?

Mr. TROTT. I am not able—I had a 1-hour discussion with that reporter over the weekend and I told the reporter, and I must repeat to you today, that I am not allowed under the law to describe the parameters of the grand jury that is investigating or might be investigating this case. When you get into specifics and you ask me for details as to what the grand jury is doing, the law prohibits me from going into that, Senator.

Senator PROXMIRE. I'm not asking you what they're doing. I'm just saying have they been empaneled or not. Does the law prohibit you from answering that?

Mr. TROTT. I'm telling you we are conducting an open criminal investigation utilizing the grand jury. As I told this reporter, I told this reporter, who with all due respect to the reporter does not understand Federal criminal investigations, if I can speak now in the abstract, an open grand jury investigation does not mean all the time it can that there is a specific grand jury empaneled. It means that you use a grand jury as a part of the investigating device in the case in order to get witnesses before the Federal Government for the purpose of getting information and documents that are gathered with grand jury subpoenas and all the rest.

Senator PROXMIRE. Could you tell me, Mr. Trott, whether or not the grand jury has been empaneled as of now?

Mr. TROTT. I can tell you we have been using a grand jury in this case to gather information.

Senator PROXMIRE. Now how do you define an open grand jury investigation? Does it have any particular meaning? Is it a vague label that you can put on anything you're looking at that you may present to an existing grand jury set up for some other purpose?

Mr. TROTT. We frequently use grand juries that are normally sitting on particular cases. That's not unusual at all. That happens all the time. An open criminal investigation means an open criminal investigation looking at the facts or circumstances in connection with the Federal law to determine whether or not there was a violation of Federal law and whether or not the perpetrators or persons responsible can be identified. In that respect, the use of a grand jury makes an open Federal criminal investigation but I'm afraid now we're just beginning to quibble over words and semantics and terms, but I can tell you that an open criminal investigation is designed to use, has used, and will use the grand jury as a method of obtaining evidence and information.

Senator PROXMIRE. Is it correct or incorrect that the first time you said publicly that there is an open grand jury investigation of

General Dynamics was after you were served by Senator Grassley with a subpoena?

Mr. TROTT. I'm not sure I know whether that's the case, Senator, standing here right now. I can tell you that the ordinary rules and guidelines of the Justice Department which we adhere to more often than not and try to adhere to all the time is to never admit the existence of an investigation, period. And the reason for that is not that we like to operate necessarily in secret but because there's a longstanding tradition in this country that persons under investigation should not be trashed in public. This is out of a respect for the constitutional rights of the individuals involved, the presumption of innocence, and for the integrity of the investigation itself, as we tried to explain to you in this case. So our ordinary policy is not to even confirm the existence of an investigation, period, much less to describe its parameters.

Senator PROXMIRE. You were the one who brought up the grand jury. You brought that into the situation. We are just trying to find out when you made that decision to do so. It was after Senator Grassley had issued the subpoena. Is that not right?

Mr. TROTT. Standing here right now, I can't reconstruct that.

Senator PROXMIRE. All right. Senator Grassley.

Senator GRASSLEY. Well, you used the term "trashed in public." Is that an inference that we might somehow trash somebody in public if we got some information?

Mr. TROTT. No, Senator. As I indicated before, that's not the presumption. That's not accurate. I was trying to explain to you the reason why we do not talk about investigations. Certainly I don't think that that's your intention. It's not even close to that. But when you start to take a look at some of the newspaper articles that have appeared on this case, it's clear to me that if I were a defendant I would not be too thrilled about my right to a fair trial. That doesn't proceed from anything that you have done, but it proceeds from a lot of factors here.

Senator PROXMIRE. Now what actions specifically constituted your decision to reopen it?

Mr. TROTT. I'm sorry, Senator. I didn't understand.

Senator PROXMIRE. What actions specifically constituted the basis for your decision to reopen the case?

Mr. TROTT. What actions constituted the basis?

Senator PROXMIRE. Yes. You reopened the case after it had been closed and I'd like to know why you did, what was the reason for it?

Mr. TROTT. In our professional judgment we were presented with new facts and circumstances that indicated that was an appropriate thing to do.

Senator PROXMIRE. Was there a memorandum, was there a discussion, was there a meeting in the Justice Department in which you decided that this was the time to do so, aside and apart from the fact that you had a subpoena from Senator Grassley?

Mr. TROTT. Yes.

Senator PROXMIRE. Can you tell us when that actually occurred? Can you tell us anything more about it?

Mr. TROTT. As I say, Senator, I don't know exactly when it was that I had this meeting standing here right now. I remember it

vaguely as occurring sometime in the early part of the summer or the late spring, but I can't give you a fixed date.

Senator PROXMIRE. So it was an oral discussion, no written memorandum, no documentation. You simply recall somehow that you decided and the time that it appeared to us at least was after you got the subpoena?

Mr. TROTT. I can't reconstruct that standing here right now. If you're asking whether the grand jury was created in response to the subpoena, the answer is no.

Senator GRASSLEY. Senator, for your benefit as well as Mr. Trott's, who was not present yesterday in my office when we had a meeting, I have a difficult time understanding why yesterday in a private meeting which was called for the purpose of discussing this case, no one could pin down the date it was reopened, and that's what this issue is all about here. This is a reopened case and when it was reopened, but neither you now, Mr. Trott, or the Deputy Attorney General or the Associate Attorney General could tell us when. And I would think at the very least that we asked the question yesterday that you may have anticipated that it would be asked today. In fact, there was even some discussion yesterday of what might be discussed at today's meeting.

Mr. TROTT. Yes, and I was told that nobody would tell us.

Senator GRASSLEY. That's not true, but go ahead.

Senator PROXMIRE. Let me ask you on what date and by what specific action did Attorney General Smith recuse himself from the General Dynamics case?

Mr. TROTT. I'm advised that the Attorney General recused himself from participating in the General Dynamics case because of his involvement with the law firm with which he used to be associated which again I'm told did some work for General Dynamics, and the Attorney General believed this would create the appearance of a conflict of interest.

Senator PROXMIRE. When did you learn about this?

Mr. TROTT. A number of months ago. Exactly when, I don't know.

Senator PROXMIRE. Was it a discussion with Attorney General Smith?

Mr. TROTT. No. I was advised by his staff.

Senator PROXMIRE. Well, then, it's second hand that you got it; it wasn't direct?

Mr. TROTT. That's correct.

Senator PROXMIRE. You were advised by staff?

Mr. TROTT. That's correct, Senator.

Senator PROXMIRE. Is it true that when the case was terminated in December 1981 that the Attorney General had not yet recused himself from the case?

Mr. TROTT. I'm not sure. Again, I don't know the dates. It would all be secondhand information.

Senator PROXMIRE. Well, can you find out when he did recuse himself? That's a matter of record, I would think.

Mr. TROTT. Yes, I suppose we can. The records don't reflect that he had anything to do with it up to that point.

Senator PROXMIRE. The records don't what?

Mr. TROTT. That he had anything to do with it up to that point, but again, I don't have any firsthand information.

Senator PROXMIRE. Can you certify to this subcommittee that there was no participation by any high official in the Justice Department in the arrangement with the Navy or General Dynamics to terminate the investigation as part of the deal involving removal of Admiral Rickover and Mr. Veliotis from their jobs?

Mr. TROTT. Senator, as you know, I have only been in the Justice Department in Washington for 14 months. I have no personal knowlege of any of that at all, one way or the other.

Senator PROXMIRE. Well, that's why we invited Mr. Jensen to testify and he did not appear.

Senator GRASSLEY. I think at the very least, Senator, we're going to want these dates reconstructed for the record, when the case was opened and when the first grand jury involvement was. That can be submitted to us in writing.

Mr. TROTT. Let me try to do that, Senator. I will do that for you.

Senator PROXMIRE. Senator Grassley, I have more questions, but I will yield.

Senator GRASSLEY. Well, I have a few questions I hope are constructed so that we can have a yes or no answer.

The Department received a request from myself and Senator Proxmire dated August 9 for information on three shipbuilding claims investigations, General Dynamics being one of them, did it not?

Mr. TROTT. August 9?

Senator GRASSLEY. Yes.

Mr. TROTT. I stipulate that. I don't have the documents before me.

Senator GRASSLEY. The letter of August 9, is in the record. The Department of Justice was subpoenaed October 1, for those same materials delivered on October 4, was it not?

Mr. TROTT. I stipulate to that.

Senator GRASSLEY. The Department received a second subpoena October 5, from the Administrative Practice Subcommittee calling again for the records from the General Dynamics investigation, did it not?

Mr. TROTT. To whom was that directed, Senator?

Senator GRASSLEY. William French Smith.

Mr. TROTT. Yes, sir.

Senator GRASSLEY. The Department was informed that this second subpoena with a return date allowing a 2-week delay was a product of an agreement made between myself and the White House so that we would allow the White House time to review the matter fully in the context of the potential assertion of executive privilege. Can you affirm that the Department was informed of that?

Mr. TROTT. Again, I have no personal knowledge. I have heard that is the case.

Senator GRASSLEY. That's in a letter that's in the record.

The Department was also informed, was it not, after the passage of those 2 weeks without delivery of the material to the subcommittee that the subcommittee intended to schedule an opportunity to discuss the matter in a public hearing on October 31?

Mr. TROTT. I believe that's the case, sir.

Senator GRASSLEY. The Department was also informed on October 19, that I would agree at the request of the White House, the chairman of the Judiciary Committee, and the Department of Justice itself to meet privately with the Deputy Attorney General in an effort to resolve this matter. Is that true?

Mr. TROTT. I assume so, Senator.

Senator GRASSLEY. Let me also refer to the White House letter from James Baker dated October 29, in which he thanked me for agreeing to meet with the Deputy Attorney General before proceeding further with the subpoena. He states that among the reasons for meeting with DOJ was for the Department of Justice to seek and explore possible methods of accommodation. In a letter from Associate Attorney General D. Lowell Jensen dated October 19, he says, "I hope that you will agree to meet with me or Deputy Attorney Jenkins at the earliest opportunity to discuss how the interest of your subcommittee can be reconciled with the needs of this Department."

My impression was then at that time that the Department would be meeting with the intention of trying to work out some type of compromise agreement, but obviously my impression was wrong. So my question is, the Department at yesterday's meeting received from me an offer which specified the confidential handling of the records the Department labeled as sensitive to its investigation. It did receive that, right?

Mr. TROTT. Yes, Senator. That was delivered to us and asked us to study it.

Senator GRASSLEY. OK. My assumption was that DOJ did not accept that offer. Is that correct? The offer that I made in that confidential memo?

Mr. TROTT. I was told that you made it to us and you said that we didn't have to respond right away, and we said we would study it.

Senator GRASSLEY. So there's no answer.

Mr. TROTT. Am I misstating the situation, Senator, that you asked us to study it and indicated a response was not necessary right away?

Senator GRASSLEY. I think your understanding of that is accurate, but I also said that if you would please, in the environment in which I read the letter from Mr. Baker, the letter from Mr. Jensen, in which I agreed to come back to Washington from Iowa to sit down and discuss this matter with them, that there would be some accommodation.

Mr. TROTT. How much time did you have in mind?

Senator GRASSLEY. We discussed that for a long period of time and I thought that there would be some sort of suggestion of accommodation because it came from the executive branch of Government. There wasn't. So I did on my own initiative put out for consideration for the Department's consideration what I handed yesterday and I guess I'm asking for your answer now.

Mr. TROTT. Senator, how much time did you have in mind when you indicated to us last night that we should study this? I saw it for the first time myself at about 6:30 last night.

Senator GRASSLEY. Well, OK. So you did just see it. I can appreciate that. On the other hand, it's very, very similar to agreements

that the Department of Justice has already entered into with other committees of the Congress for access to information.

Mr. TROTT. Are you referring to the Elbosta agreements? To what is it similar?

Senator GRASSLEY. I'm talking about EPA and Interior, those agreements.

Mr. TROTT. It may be, as I indicated earlier, each case is different. As we told you yesterday, we would seriously consider the document that you submitted to us and get back to you as soon as we could.

Senator GRASSLEY. Again, considering the environment in which the discussion went on yesterday, I would think that considering the White House asking for my delay for 2 weeks and then an additional period of time that has evolved since then for us to get together, that that's plenty of time for accommodation, and accommodation is the word from the executive branch and it's not my word. I'm just repeating what I had been led to believe was the situation.

Mr. TROTT. Senator, if you had indicated to us last night that you wanted an answer by this morning, we probably would have tried to get you one. I was told that you gave it to us and told us that an answer was not necessary right now, to study it and get back to you, and that's what we are doing.

Senator GRASSLEY. Do you have any reason to believe these subcommittees and their staffs would not handle the subpoenaed material with the appropriate care guarding against any disclosure of that information which may jeopardize the prosecution?

Mr. TROTT. With all respect, I'd like to discuss that with you in executive session and not in public. I also understand that this particular subcommittee is slightly different in its interest than the other subcommittee that has the subpoena outstanding.

Senator GRASSLEY. Why executive session?

Mr. TROTT. I'd just as soon discuss that with you in private.

Senator GRASSLEY. It would seem to me I raised the point yesterday with the three people from the Department of Justice very clearly in regard to our legislative and legal basis for a request for information, our constitutional responsibility, and the very issue of trustworthiness was not raised at that meeting, and that was in executive session. It was in my office.

Mr. TROTT. Senator, you've asked me a question. I'd be delighted to discuss it with you. It's my suggestion in good faith that we talk about it in private before we start dealing with matters as sensitive as those. I'd be happy to answer those questions in private.

Senator GRASSLEY. Well, I think for the public record, I want to know whether or not you think, yes or no, whether or not this subcommittee can handle those materials in a confidential manner.

Mr. TROTT. I respectfully request to discuss that matter in private with you. I would be delighted to do that and I don't think it's in the interest of anybody to discuss it on the record.

Senator GRASSLEY. Well, why do you want to talk about that in private?

Mr. TROTT. I just think there are some things that are best discussed between us in private and it's my offer to do that with you.

Senator GRASSLEY. We had a private meeting yesterday.

Mr. TROTT. I was not there.

Senator GRASSLEY. I asked the same question yesterday.

Mr. TROTT. Senator, with all due respect, I was not there to hear the question. You have asked me that question today and I would be delighted to discuss that with you in private. I think that's in the best interest of both the Justice Department and this particular subcommittee. Senator, respectfully, could I also ask if this is really germane to this particular subcommittee as opposed to the other one that's not meeting now?

Senator GRASSLEY. Well, it's a request from both subcommittees and, for my part, I've asked the question. I expected an answer in public. I just want the record to show that I did not get an answer and we'll drop it at that point.

Mr. TROTT. And the record shows that I remain available to discuss this with you at any time of the day or night. Senator Proxmire, I specifically direct that request to you.

Senator GRASSLEY. OK. The bottom line is, then, at this point you're refusing to answer this question in public?

Mr. TROTT. No; I'm requesting that we discuss this in private.

Senator GRASSLEY. OK. I guess I should ask the vice chairman of the subcommittee at this point for the record what you desire to do?

Senator PROXMIRE. Well, this is a public hearing and I want to have as much as we possibly can have on the record. I think if you have something you can disclose to us privately, I certainly will make myself available and I'm sure Senator Grassley will too, and the staff will, so we can discuss it privately. But at this public hearing we should get everything we possibly can on the record. We're talking about a whale of a lot of interest on the part of the public. After all, it's national security at stake here as well as a tremendous amount of money, and I think it's the public's business and the public ought to know and I think if we go off the record—that may be necessary, but I think we should do that at another time and we should do that as promptly as possible.

Mr. TROTT. Senator, if you wish to go back and make it part of the public record, I have no objection. I just simply don't want to discuss that with you in public right now before you know what it is. If you want to come back and put that on the record, I have no objection to that at all.

Senator GRASSLEY. Let me ask for the record, why weren't you at the meeting yesterday?

Mr. TROTT. I really don't know. I wasn't invited.

Senator GRASSLEY. We did not stipulate who should be there.

Mr. TROTT. Senator, I don't know. I am the Assistant Attorney General in charge of the Criminal Division.

Senator GRASSLEY. It was up to the Department who came from the Department.

Mr. TROTT. That's right, and they sent the Deputy Attorney General herself, who's the Acting Attorney General on the case. They sent the Associate Attorney General, Mr. Jensen; and they sent Mr. Robert McConnell who's in charge of the Office of Legislative Affairs, three people to discuss this with.

Senator GRASSLEY. Let me ask also, then, why you're the only one here today? We invited the three others as well.

Mr. TROTT. I was asked to come over. We felt that one person would be sufficient to answer your questions, this being a meeting of a subcommittee of the Joint Economic Committee rather than a meeting of the Subcommittee on Administrative Practice and Procedure of the Judiciary Committee which we were told was not meeting.

Senator GRASSLEY. That doesn't matter, but anyway, we have already had one example of when we asked questions of you you could not answer, so it seemed to me obvious that other people present probably could have been available to answer the question.

Mr. TROTT. Senator, the question that I can't answer is the question that I should be able to answer which is when we began the grand jury investigation. That's a question of me going back and trying to reconstruct with my calendar and other people when that took place. It's not something that everybody knows but me. That's why we thought that this was germane to the subcommittee on economic matters, not the administrative practice subcommittee.

Senator GRASSLEY. Well, you, yourself, used the excuse that you weren't around—which is actually fact—that you weren't around during the previous investigation, so it seemed to me that the people who were involved at that point were invited and should have been here to answer those questions.

Let me move on. In your opinion is there ever an appropriate time for Congress to investigate an open case?

Mr. TROTT. You're asking me a big question and I suppose that—an open case like this, I don't believe so because I have seen personally what it does and I believe that what it produces, unintentionally of course, is not in the interest of the faithful execution of the law. That's why we have asked that you simply defer your inquiry of this case until it's over. We've given you Newport News. We are going to continue to work with you on that. We have given you Lockheed. There are going to be people up here to talk to you about Lockheed and we're going to give you General Dynamics. We're going to give you book, chapter, and verse on the General Dynamics case when the case is closed. What can I tell you? Again, it's not a question of withholding information. It's our request to you for an accommodation or recognition of these important principles.

I've gone back and I've talked with a number of people in the Justice Department about previous instances of congressional interest in cases and I have heard stories that set the hair up on the back of my neck—the hair on the back of my professional neck because as a professional, I'm not at all thrilled to see what this kind of pressure can produce in the decisionmaking process. It is not in the best interest of the need for this country to have professional prosecutors make professional decisions based on the law and the evidence. That's the most important thing to the Department of Justice. We must faithfully execute the law and that can only be done in the environment that's provided by the Constitution of the United States, by the Federal grand jury, and the normal ways of investigating it.

So to answer your question in the short form, standing here right now, I personally, from the prosecutor's perspective because I don't have the legislative perspective, I have a hard time conceiving of

an open case involving a criminal investigation with the rights of people involved using a grand jury that ought to be looked into contemporaneously by Congress. After the fact, that's a different question.

Senator PROXMIRE. Could I ask you, Mr. Trott, why are you making it impossible for us to interview attorneys and FBI agents involved in the three cases and you intend to continue preventing us from doing so? And I'm not talking just about General Dynamics which is now open, but Newport News which is closed and Lockheed which is closed.

Mr. TROTT. Senator, I don't know what you're talking about and I would ask you when you say, "Why you are making it impossible," do you have any information that I personally have impeded——

Senator PROXMIRE. Well, you're representing the Justice Department, Mr. Trott. We invited Lowell Jensen to appear too and he decided not to. I assume you are here able to talk on behalf of the Justice Department.

Mr. TROTT. Who have I prevented on the other cases? Who have we prevented on the other cases? To my knowledge, we've done absolutely nothing that could even be remotely construed as some sort of prevention of other people talking to you. If you could be more precise I could answer your question.

Senator PROXMIRE. Does that mean you will not prevent us from talking to FBI agents on these other cases?

Mr. TROTT. Senator, I'll answer that question in a second, but could you identify for me what you believe has been done that's prevented you thus far from talking to these people? What has been done?

Mr. KAUFMAN. What has been done, Mr. Trott, is that when requests to speak to individual attorneys have been made, we have been referred to the Office of Legislative Affairs and have not been able to get through to the individual attorneys. The interest of this subcommittee is to be able to interview directly U.S. attorneys, other Justice Department officials, and FBI agents about their role in the three cases, and particularly the two closed cases, without the presence of their supervisors or representatives from the Office of Legislative Affairs so that we could be assured of getting frank and candid comments and responses to questions.

Mr. TROTT. What you referred to, Mr. Kaufman, is accurately described as a standard procedure that exists in the U.S. attorney's manual and the Department of Justice's rules and regulations and maybe the CFR's—I'm not sure—it simply says at any time any Justice Department employee gets a request by Congress for information that the matter ought to be referred to the Office of Legislative Affairs for coordination. That's all it is, a coordination mechanism, so that the Department can know what its various component parts are doing with Congress. That's all it is. It's not with any disrespect whatsoever or intended to be, nor will it operate as a barrier to the information you wish.

Mr. KAUFMAN. Will you then in the future see that arrangements are made so that we can talk to these individuals without the presence of their supervisors or representatives from the Office of Congressional Relations?

Mr. TROTT. Mr. Kaufman, I can't answer that question right here because again you're dealing with individuals and I don't know what their desires might be. I cannot speak for the individuals that you wish to talk to if you want me to compromise their rights or interests. I can tell you that the Department of Justice is not going to do anything to impede or interfere with your efforts to get information in this case other than matters involving 6(e) and the kinds of things that we've all talked about so much now that we're getting bored with it.

Mr. KAUFMAN. Is it fair to say, then, that you will not object to any individual in the Justice Department who is willing to talk to us to do so without the presence of their supervisors or representatives from the Office of Congressional Relations?

Senator PROXMIRE. Could I further amend that question by the counsel and say that not only would you not object—I'm not speaking of you, specifically Stephen Trott—you're a man of authority, but the Justice Department will not object and the Attorney General will not object?

Mr. TROTT. Senator, in the abstract, this may sound like I'm not answering your question. It's awfully difficult in the abstract to discuss that. You're dealing with cases that involve 6(e) and other kinds of things. I don't know what variety of questions would come up that might require the Justice Department in some other capacity to interpose some objection. All I can tell you is that we in those cases have entered into a cooperative mode with you and to the extent that we can, consistent with the law and our policy, we are going to do that.

Senator PROXMIRE. That sounds like no to me. Can you certify, Mr. Trott, that there's nothing in any of the documents or information withheld from Senator Grassley's subcommittee or this subcommittee that indicates wrongdoing or criminal violations by any official of the Justice Department or any Government official?

Mr. TROTT. Senator, as I have continued to tell you, I have seen nothing like that at all. I have seen professional lawyers grappling with different and difficult problems and evidence. That's all. But again, I was not there at this time and I give you that caveat, but I have seen nothing along those lines.

Senator PROXMIRE. Have you read the file?

Mr. TROTT. Not all of it. I have read a substantial portion of the operative memos that discuss the disposition of this case. I know the individuals, some of the individuals that are involved. I have the highest professional regard for the people involved in this case.

Senator PROXMIRE. But you cannot assure us that there aren't indications of wrongdoing or criminal violations by officials of the Justice Department?

Mr. TROTT. If there are, I will resign on the spot. That's how confident I am in their integrity.

Senator PROXMIRE. You're a very able Justice Department official, but——

Mr. TROTT. I'll resign on the spot if——

Senator PROXMIRE [continuing]. I wish you would review the case and have others review the case and be able to answer that question for the record at least unequivocably one way or the other.

Mr. TROTT. I am confident that this case was handled professionally by people acting in good faith, doing their best to take a look at the evidence and see whether or not the law was abided by, and I will resign on the spot if I find any indications that what I have just stated is to the contrary.

Senator PROXMIRE. Has the President yet reviewed the documents in the General Dynamics case and have they actually been forwarded to the White House?

Mr. TROTT. I wouldn't even start to comment on what the White House is or is not doing. That would be completely out of my sphere.

Senator PROXMIRE. Well, can you tell us whether the documents have been forwarded to the White House?

Mr. TROTT. I am told that they have been. Again, that's not something I'm personally responsible for.

Senator PROXMIRE. Well, Mr. Baker and Mr. Fielding have indicated an interest in it on account of the first subpoena. Obviously they are concerned.

Mr. TROTT. May I interpose something personally? If you're talking about indivduals involved in this General Dynamics case, I have now been back here long enough to know these people and I stand before you today telling you that I find them to be in this case men of integrity. I'm talking about the people that decided these cases, professional law enforcement people who have devoted their careers to protecting the interests of the taxpayers and the citizens of the United States and I'm speaking of men for whom I would lay down my life under some of these circumstances and if you find any evidence that this is wrong I will resign on the spot.

Senator PROXMIRE. I just had one other question. If your argument about withholding documents in an open case is correct because of the so-called chilling effect on future witnesses, couldn't that be used by all Government agencies, including the Defense Department and the CIA to withhold documents and information from Congress?

Mr. TROTT. I hope it's only used when it's appropriate and it wouldn't be used when it's not appropriate.

Senator PROXMIRE. It could be used at any time on a coverup basis.

Mr. TROTT. Senator, could I ask you to go back to your other question in the abstract?

Senator PROXMIRE. Certainly.

Mr. TROTT. You asked me a little bit earlier about whether or not an inquiry like this has the capacity to skew an investigation and let me just indicate to you, as we have in our letters, one of the concerns that we have is that the appearance of congressional pressure might cause career people to start thinking about what they're doing, and it's my judgment that a career prosecutor needs to operate in a situation where they know that they're going to be able to call a case appropriately. Now after it's over, the chips fall. But contemporaneous pressure——

Senator PROXMIRE. Let me just interrupt, Mr. Trott. Did you say it might cause them to think about what they're doing?

Mr. TROTT. That was a bad choice of words, wasn't it? [Laughter.]

Senator PROXMIRE. Well, it would be something new in this town, I suppose.

Mr. TROTT. I'm not touching that line. What I meant was, to begin to put it into a perspective other than the professional perspective that they are supposed to do things in and, with all due respect, even the mere question by you as to whether or not there was wrongdoing by these people might create a thought in the mind of the next person handling one of these cases, "Well, hell, why should I exercise my judgment and do what I have been told to do ever since I became a prosecutor and all the case the way I see it. Why don't we let the jury do the deciding?" Now I have told my people we're not going to let that happen, we are going to handle this case right from start to finish and we're going to be absolutely immune from those kinds of things. These are the kinds of things about which we are concerned.

Senator PROXMIRE. Well, Mr. Trott, I hope you understand that this is a pluralistic system here and we have our responsibilities and you have yours, and one of our responsibilities is to be as vigorous and as aggressive and cynical, if you will have it, about what goes on and if there is any prospect of criminal wrongdoing, and there has been at times in the past in our 200 years of government in past administrations. It's our job to do our best to expose this.

Mr. TROTT. Senator, I appreciate that. That's why we're telling you we're going to give you these files consistent with the law after the open investigation. You will see everything we have that we can share with you, as we have done with Newport News.

Senator PROXMIRE. Of course, what happens is that's much too long, it's history, and we want to get as much as we possibly can when it's going on when we can do something about it that's constructive.

Mr. TROTT. May I ask what you intend to do about it if you see something that's going on? Let's assume for a second that we do start turning over our files to you and you saw a recommendation, as indicated in Newport News, from one lawyer indicating the case ought not be prosecuted and you disagreed with that. Might I inquire what you might do under those circumstances?

Senator PROXMIRE. Certainly what we would do under those circumstances is find out the substance of his recommendation. When the people who have worked on these cases day after day, week after week, for months and years make a recommendation, it seems to me that ought to be given very, very careful consideration. We ought to weigh it strongly.

Mr. TROTT. I agree.

Senator PROXMIRE. There ought to be good reason for having rejected that and, as you know, there's been no prosecution of any big defense contractor, none, ever. Small ones, yes; but never a big one, never.

Mr. TROTT. Your beginning statement I agree with entirely, that when somebody in the Justice Department is viewed highly enough to be given a case like this makes a recommendation, it ought to be reviewed seriously. My review of these files indicates that those recommendations were reviewed seriously by the people who were reviewing them.

Senator GRASSLEY. Are you done with your questions?

Senator PROXMIRE. I have a closing statement, but you go ahead.

Senator GRASSLEY. Well, I'm done with questioning too.

Senator PROXMIRE. Do you want to give your closing statement?

Senator GRASSLEY. As far as my compromise offer is concerned, I think it's clear, Senator, and everybody else here, that we as a subcommittee are on record since October 19 that today we would proceed with contempt.

The Justice Department received an agreement yesterday and should have known about today's intent on our part to proceed and if the Department really wanted to give us an answer and show good faith by this morning, I think that they could have addressed that issue. As far as I'm concerned, Justice has no interest in compromising.

We would not have been here today had Justice Department either complied with our request or dealt with us in some good faith on this issue. Instead of discussions of the constitutional legal merits, the subcommittee instead encountered pressures of political interests and intimidation. It is unfortunate that the merits of the issue have not been argued and resolved and, absent legitimate challenges by the Department, the subcommittee has determined that its grounds for proceeding are irrefutable.

On October 5, the Subcommittee on Administrative Practice and Procedure voted to give its chairman continuing authority to enforce the subpoena of Justice Department records related to the General Dynamics case issued to Attorney General William French Smith.

Since that time, the subcommittee has truly tested the bounds of cooperation with the Department to avoid using such authority. The record fully supports this contention and as I've related in great detail we have delayed twice. We have given the White House time to review the materials for executive privilege. We have met with Justice Department officials. We have offered a compromise agreement for access based on precedents agreed to by this same Department of Justice.

In short, we have exhausted all avenues available to avoid extraordinary methods of enforcement. By its recalcitrance, the Department has determined the course of events for us. It has tied the hands of this subcommittee and there's only one course of action left.

SUBCOMMITTEE FINDS THE ATTORNEY GENERAL IN CONTEMPT

So with much regret and with much genuine surprise that no accommodation was even offered by the Department of Justice, we have no choice but to find the Attorney General in contempt. With the authority issued to me by the subcommittee on October 5, the subcommittee hereby finds the Attorney General of the United States, William French Smith, because he is custodian of the documents, in contempt.

Mr. TROTT. Senator, may I make a response to that?

Senator PROXMIRE. Well, let me go ahead.

Mr. TROTT. Then I would appreciate the opportunity, Senator.

Senator PROXMIRE. All right.

Mr. TROTT. The Department of Justice was specifically advised that the Subcommittee on Administrative Practice and Procedure involving the subpoenas was not meeting here today. We came up here to talk with Senator Proxmire's subcommittee of the Joint Economic Committee on economic matters and we were told that these were not issues on the calendar and frankly the Justice Department's position, since this is not the Subcommittee on Administrative Practice and Procedure, that the references made to contempt are out of place and uncalled for. We were told by the chairman of this committee that the Subcommittee on Administrative Practice and Procedure of the Judiciary Committee was not meeting today.

Senator GRASSLEY. Well, that is true and it's based on the ongoing authority that I referred to on October 5, already given to me by the subcommittee, and that speaks for itself, Senator Proxmire.

Senator PROXMIRE. Thank you very much, Senator Grassley.

Let me conclude by saying that the testimony today has introduced evidence that prosecutors and FBI agents in the original investigation of General Dynamics recommended on three separate occasions that there be indictments and prosecution in this case. The last recommendation for indictment of the company and two individuals came from the FBI, 1 month before the case was terminated.

Congress is entitled to ask what's going on here? The Justice Department has some of the most important responsibilities delegated to any executive agency. It is also the most secretive. It's more secretive than the CIA and other agencies concerned with the national security. Those agencies are accountable to Congress. They provide us with information that's requested and they are subject to audit by the General Accounting Office.

The Justice Department is the only agency I know of that refused to cooperate with congressional inquiries and does not allow GAO to examine its files and records in order to assess the management of the Department's activities.

We invited four Justice officials to this hearing. Mr. Trott appeared and we're grateful for it and you're certainly a very competent witness. Mr. Smith, the Attorney General; Mr. Jenkins and Mr. Jensen did not. It was Mr. Jensen who made the decision as head of the Criminal Division to close the case. Mr. Smith states he recused himself from the General Dynamics case because of a conflict of interest. We have only thirdhand information of this conflict and Mr. Trott is unable to tell us when the Attorney General recused himself.

There are questions about this case that only Attorney General Smith and Mr. Jensen can answer and we plan to invite them again to appear before us. The more we learn about the Justice Department's case—General Dynamics and other cases—the more clear it has become that we need more information and we intend to become as fully informed as we possibly can be.

Thank you very much, Mr. Trott.

The subcommittee will stand adjourned.

[Whereupon, at 12:05 p.m., the subcommittee adjourned, subject to the call of the Chair.]

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